

**U.S. Department of Education
Student Financial Assistance
Student Channel - Collections
Administrative Wage Garnishment
Hearings Branch
Atlanta Service Center**



**Administrative Wage Garnishment
Hearings Support Manual
Private Collection Agencies
January 2005 Revision**

Introduction.....	6
What is Administrative Wage Garnishment (AWG)?.....	6
What is the purpose of AWG?	6
What authority controls AWG action under the DCIA?	7
A Summary Of What's New Under DCIA AWG:	7
What are the debtor's rights in the AWG process?.....	9
What are the debtor's responsibilities in the hearing process?	10
What is an AWG hearing?	10
When is a debtor's objection to collection considered to be a request for an AWG hearing?	11
When does the debtor receive an oral hearing?	11
What is a timely Request for Hearing? How does a timely Request affect the AWG process?.....	12
What is the role of the hearing official?	13
Role of the Private Collection Agency.....	15
Private Collection Agencies (PCA) Requirements Regarding Administrative Wage Garnishment.....	15
What steps make up the AWG workflow? Which steps does the PCA handle?	17
What procedures must the PCA follow to establish a voluntary repayment plan?	19
Part 1 (Account in AWG Status Code WG1) - Pre-hearing Agreements	19
PCA Cover Letter for Pre-Hearing Repayment Agreement.....	26
Pre- Hearing Repayment Agreement with the U.S. Department of Education.....	27
Part 2 (Account in AWG Status Code HR1) – Post-hearing, no hardship claim	37
Part 3 (Accounts in AWG Status Code HR1) Post-hearing, hardship claim denied	40
Part 4 (Accounts in AWG Status Code HR3) Post-hearing, hardship partially allowed	42
Letter V41 Post Hearing VPY Refused – ED will AWG	45
PCA Cover Letter for Post Hearing Repayment Agreement.....	48
Post Hearing Repayment Agreement with the U.S. Department of Education.....	49
What procedures must the PCA follow to establish a compromise agreement?.....	53
AWG Lump-sum Payment Settlement Agreement.....	54
AWG Installment Payment Settlement Agreement.....	55
What must the PCA know about the AWG Subsystem status codes?	57
Notices of Intent to Garnish	58
What are the grounds for requesting a hearing?	59
Who has the burden of proving facts at issue in a dispute regarding a garnishment?	60
How does a prior decision affect the hearing process?	60
How does a prior VPY affect the hearing process?	61
What is reconsideration?.....	62
Does a request for reconsideration or a subsequent Request for Hearing affect issuance of a garnishment order?	63
Can the debtor negotiate repayment terms after the first order has been issued?	63
Can the debtor pay a compromise to resolve the debt once garnishment has been ordered?	63
Can the Hearing Official negotiate repayment options?	63
What is a financial hardship?	63
What regulations govern financial hardship issues?	64
When and how can the debtor claim hardship?.....	66
What information is required to determine financial hardship?.....	67
Financial hardship and HHS National Poverty Guidelines	68
How does the AWG hardship calculator operate?.....	69

How to account for non-ED garnishment orders and documented binding formal repayment agreement	71
Effect of outstanding garnishments and other legal obligations.....	72
How to evaluate financial information developed with hardship calculator	74
What is a balance dispute?	75
Claims of Employment for less than 12 months after involuntary termination.....	76
How to handle employment duration information:	76
Claims of Third Party / Wrong person and Social Security Number disputes	77
Claims of Bankruptcy Protection or Discharge	78
Websites For Bankruptcy Calculators:.....	79
Disability claims	80
Death claims	80
Hearing request with NO specific objection stated	82
Claims that the debt is not enforceable for other reasons	82
Claims of entitlement to loan discharge relief	82
How to treat discharge claims based on closed school, false certification, or unpaid refund?	83
Claims for Teacher Cancellation	84
Transmitting Privacy-Act protected data by internet email.....	85
Requests for documentation.....	86
Appendix A PCA AWG Timeline	100
Appendix A1 What should the PCA include in the Hearing Package for ASC?	102
Appendix A2 AWG RFH Cover Sheet.....	103
Appendix A3 PCA Standard Cover Letter for All Document and Application Request(s).....	104
Appendix A4 Denial of Oral Hearing Request– No Reason Stated	106
Appendix A5 Denial of Hearing Requested Timely – No Objection Stated	107
Appendix A6 Denial of Hearing Requested Untimely – No Objection Stated.....	108
Appendix B T11 - Transitional Notice to 15% AWG	109
Appendix B1 Request For Hearing (RFH) Form.....	111
Appendix C T12 DCIA Notice of Proposed AWG (formerly SO2).....	118
Appendix D T07 - Notice to Resume/Re-Start Suspended Garnishment Action.....	120
Appendix E T09 Notice to Increase Reduced Garnishment Payment.....	122
Appendix F T08 Notice to Increase All 10% Garnishment Order to 15%.....	124
Appendix G Pre-Hearing PCA Cover Letter and Repayment Agreement.....	126
Appendix H Post Hearing PCA Cover Letter and Repayment Agreement.....	128
Appendix I Garnishment Order	130
Appendix J Cover Letter for Transitional Garnishment Order from 10% to 15%	137
Appendix K Change Order	138
Appendix L Notice to Stop Wage Garnishment	141
Appendix M A91 Notice To Debtor - AWG Order Being Issued	142
Appendix N Cover Letter For Financial Disclosure Statement.....	143
Appendix O System Letters Used for Responding to Hearings.....	144
Appendix P Final Regulations Implementing DCIA Garnishment Authority	147
Appendix Q Section 152 of the Internal Revenue Code: “dependents”	166
Appendix R: Declaration of Caregiver Services	169
Appendix S: Fax Cover Sheet to Submit Untimely Documents to PIC.....	170

Introduction

The Debt Collection Improvement Act of 1996 (DCIA) authorizes Federal agencies to garnish administratively, that is, without court order, up to 15% of the disposable pay of an individual who is not a Federal employee to collect a delinquent non-tax debt owed to the United States. The Department has recently adopted regulations to implement this authority for a debt owed to the United States under a program administered by the Department of Education. With the implementation of the DCIA provisions for administrative wage garnishment by the Department of Education, the amount of possible abuse or misuse of this authority increases. The saying that the “eyes of Texas are upon you” is more true now than ever. The authority granted to Federal agencies under this Act is tremendous, and will impact the lives and livelihood of many American voters.

It is imperative that we are all on our guard against abuse or misuse of this authority, and that we take action immediately to correct any improper conduct. The Hearing official is the soldier standing watch over the program to ensure that the debtors’ rights are never abused and that the integrity of the program is maintained at all cost. Although the volume of work is expected to triple, we have learned a lot from our experience of garnishing wages at 10 percent, which will help with the implementation of the DCIA 15 percent regulations. Our partnering early on with the Private Collection Agencies (PCAs) and the Public Inquiry Contractor (PIC) will now help pave the way for a smooth transition.

This manual is designed to be used much like the AWG Hardship Calculator, as a tool in helping Private Collection Agency perform their duties, and like any other tools there will be changes and improvements. This manual is not to take the place of or substitute for the sound reasoning and deductive skills of the contractor. You’re on the frontline and must make the final decision, as to best method to recover these fund, so do your best to be impartial, objective, honest, and to render the fairest decisions possible.

What is Administrative Wage Garnishment (AWG)?

Garnishment is a traditional debt collection remedy that compels a third party who owes a debtor to pay the creditor of the debtor instead of the debtor. Garnishment was available, until relatively recently, only by court order, typically to enforce a court judgment. Administrative garnishment authority, formerly based on State law, and, since 1991, on Federal law, allows the creditor to act without resort to judicial power. ED considers AWG to be a tool of last resort. Before using AWG, ED expects its representatives to have attempted to resolve the debt through voluntary means: attempting to secure balance in full, an approved settlement, or installment payments that are "reasonable and affordable" based on the debtor's individual financial circumstances. Representatives must further consider whether the debtor presents a legitimate defense to the repayment of the debt(s), and whether AWG may be ineffective because the debtor is self-employed or a Federal employee, in which cases the PCA should recommend litigation or salary offset.

What is the purpose of AWG?

The purpose of AWG is to recover for the Federal taxpayer without the cost of litigation debts owed by individuals who owe the government for debts arising from Federally supported activities, including student financial assistance. DCIA authorizes Federal agencies to garnish administratively, that is, without court order, the disposable pay of an individual who is not a Federal employee to collect a delinquent non-tax debt owed to the United States. These regulations implement for the Department of Education the provisions for administrative wage garnishment in the Debt Collection Improvement Act of 1996 (DCIA).

What authority controls AWG action under the DCIA?

The DCIA, as implemented by Treasury Department regulations, 31 C.F.R. 285.11, provide the authority and guidance for Federal agencies to conduct AWG under the DCIA. Because AWG is the involuntary taking of the debtor's property by force of law, the Fifth Amendment to the Constitution, which requires due process of law before a person may be deprived of his or her property, further controls and guides the conduct of AWG by Federal agencies. Treasury rules require agencies that wish to conduct AWG under the DCIA either to adopt Treasury's rules or to adopt their own regulations, provided the agency's rules meet the standards established in Treasury rules. Department regulations were developed with careful consideration of both Treasury rules and Department experience conducting AWG under the virtually identical provisions of HEA §488A, 20 U.S.C § 1095a. Department rules, published February 19, 2003, are to be codified at 34 C.F.R. Part 34, and are found in Appendix 14 to this Manual.

This Manual offers guidance on the procedures for AWG under the DCIA and Department regulations. The Department previously used the specific provisions of HEA §488A to collect student loan debts. **Using the DCIA authority, the Department can collect POVR and loan debts.** The new regulations establishing rules to help address some common problems encountered under HEA garnishment actions and manage effectively options created in the course of those solutions.

A Summary Of What's New Under DCIA AWG:

- ◆ **The record of the hearing:** ED creates a record of the proceeding, whether that hearing is an oral or paper hearing. The record includes all key documents and records of the hearing: e.g.,
 - the debtor's request for hearing,
 - any and all material (whether evidence or argument) submitted at any time during the course of the hearing by either the debtor or ED,
 - a summary of any (live) testimony presented by the debtor and his or her witnesses;
 - notes of any events that may have affected the course of the hearing:
 - if the debtor requested access to records, whether and when ED gave access (or sent copies) to the debtor;
 - if an oral hearing was requested, ED's decision on that request;
 - if ED was unable to contact the debtor to conduct a telephone hearing, the date or dates of the attempt, the number used to make the attempt;
 - requests for extensions of time by the debtor, and ED's response to those requests;
 - If ED secured added evidence to respond to evidence or argument from the debtor, when and how ED provided that new evidence to the debtor, how ED offered the debtor an opportunity to respond to that new evidence, and whether and how the debtor responded.
- ◆ **Retention of the hearing record:** ED must retain the contents of the record in the debt file for that debt. These records are official ED records and ED may not legally discard those records except as permitted by published ED record retention schedules that pertain to that particular category of records.
- ◆ **ED's burden of proof:** ED has the burden of proof that the debt exists and is in delinquent status at the present time. ED must prove these contentions by a "preponderance of the evidence" - a phrase that simply means enough evidence that a reasonable person would consider it more likely than not that the fact exists or occurred as the proponent claims.

- ◆ **Meeting ED's burden of proof:** Whether or not the debtor requests copies of records, ED must obtain and make part of the hearing record --
 - **if the debtor objects in any way to the amount or enforceability of the debt**, a copy of the debt instrument (typically, the promissory note, for a loan obligation)
 - **in all cases**, copies of pertinent ED records showing that --
 - the debt is owed to ED and is unpaid, and
 - The debt is past-due – that the debtor is not currently repaying the debt (typically, key "screen prints" showing the basic data regarding the origin and acquisition of the debt, the amount of the unpaid balance, and the absence of voluntary payments).
- ◆ **The debtor's burden of proof:** The law places on the debtor the burden of proving those facts that make out a "defense" to the proposed AWG, because knowledge of these facts is assumed to be in the possession of the debtor, not the creditor. Thus, the debtor has the burden of proving by a preponderance of the evidence any fact that would prevent or reduce AWG by proving that --
 - the debt doesn't exist, is smaller than claimed, has been or is currently been paid, or is not legally enforceable for any reason recognized by applicable law, which may include the program statute and regulations, other Federal law, court rulings (common law), and State law;
 - the debtor is personally protected from action to collect this debt by AWG specifically (e.g., recent reemployment after loss of job), or is personally protected from any collection action (e.g., the automatic stay in bankruptcy or a discharge in bankruptcy);
 - AWG would cause a financial hardship to the debtor and his or her dependents.
- ◆ **IRS National Standards as binding rule:** ED has previously used the IRS National Standards as a reliable, but not binding, measure of hardship. DCIA garnishment rules adopt the standards as a rule governing AWG garnishment challenges, and the standards now bind both debtors and ED in evaluating hardship. As a practical matter, where the debtor presents proof that a particular expense has been incurred, but no argument or evidence that the needs of his or her household make that larger amount reasonable and necessary, ED can rely on the rule itself as a sufficient legal basis for rejecting as unreasonable that amount to the extent that the expense exceeds the amount typical under the Standards for households with size and income like the debtor's.
- ◆ **Finality of the hearing decision:** ED has previously had no rules that bar debtors from reasserting objections that ED had previously rejected.

Section 34.2 briefly sets AWG in perspective with respect to other collection tools and to State law:

§34.2 Scope of this part.

- (a) This part applies to collection of any financial obligation owed to the United States that arises under a program we administer.
- (b) This part applies notwithstanding any provision of State law.
- (c) We may compromise or suspend collection by garnishment of a debt in accordance with applicable law.

(d) We may use other debt collection remedies separately or in conjunction with administrative wage garnishment to collect a debt.

(e) To collect by offset from the salary of a Federal employee, we use the procedures in 34 CFR part 31, not those in this part.

(Authority: 31 U.S.C. 3720D)

What are the debtor's rights in the AWG process?

Sections 34.4 - 34.7 describe the debtor's rights in connection with AWG: in summary, the debtor has the right to:

Be sent a notice 30 days prior to ED ordering wage garnishment that explains ED's intention to garnish, the nature and amount of the debt obligation, and opportunity to inspect and copy records relating to the debt, to object to garnishment to collect the debt, and to avoid garnishment by voluntary repayment on terms agreeable to ED;

An opportunity to inspect and copy Department records pertaining to the debt;

An opportunity for a hearing to present evidence and argument and on any objection by the debtor to the existence, amount, or enforceability of the debt, and to obtain a ruling on the objection

An opportunity for a hearing to present and obtain a ruling on any objection that garnishment of 15% of the debtor's disposable pay would produce an extreme financial hardship;

An opportunity for a hearing to present and obtain a ruling on any objection that garnishment cannot be used at this time because the debtor is now employed for fewer than 12 months after involuntary separation from the most recent prior employment;

Having garnishment action withheld by filing a timely request for a hearing, until the hearing is completed and an adverse decision issued;

Not to be discharged from employment, refused employment, or subject to disciplinary action due to the garnishment, and to seek redress in federal or state court if such action occurs; and

Not to have any information provided to the employer but that which is necessary for the employer to comply with the withholding order.

§34.5 Contents of a notice of proposed garnishment

In a notice of proposed garnishment, we inform you of—

- (a) The nature and amount of the debt;
- (b) Our intention to collect the debt through deductions from pay until the debt and all accumulated interest, penalties, and collection costs are paid in full; and
- (c) An explanation of your rights, including those in §34.6, and the time frame within which you may exercise your rights.

(Authority: 31 U.S.C. 3720D)

§34.6 Rights in connection with garnishment

Before starting garnishment, we provide you the opportunity—

- (a) To inspect and copy our records related to the debt
- (b) To enter into a written repayment agreement with us to repay the debt under terms we consider acceptable
- (c) For a hearing in accordance with §34.8 concerning—
 - (1) The existence, amount, or current enforceability of the debt;
 - (2) The rate at which the garnishment order will require your employer to withhold pay; and

(3) Whether you have been continuously employed less than 12 months after you were involuntarily separated from employment.

(Authority: 31 U.S.C. 3720D)

§34.7 Consideration of objection to the rate or amount of withholding

(a) We consider objections to the rate or amount of withholding only if the objection rests on a claim that withholding at the proposed rate or amount would cause financial hardship to you and your dependents.

(b) We do not provide a hearing on an objection to the rate or amount of withholding if the rate or amount we propose to be withheld does not exceed the rate or amount agreed to under a repayment agreement

reached within the preceding six months after a previous notice of proposed garnishment.

(c) We do not consider an objection to the rate or amount of withholding based on a claim that by virtue of 15 U.S.C. 1673, no amount of wages are available for withholding by the employer.

(Authority: 31 U.S.C. 3720D)

§34.8 Providing a hearing.

(a) We provide a hearing if you submit a written request for a hearing concerning the existence, amount, or enforceability of the debt or the rate of wage withholding.

(b) At our option the hearing may be an oral hearing under §34.9 or a paper hearing under §34.10.

(Authority: 31 U.S.C. 3720D)

What are the debtor's responsibilities in the hearing process?

To avoid garnishment of 15% of disposable pay, the debtor must:

Negotiate repayment terms acceptable to ED or the PCA and ensure that ED receives the first payment by the response deadline date on the garnishment notice, which is 30 days from the date the garnishment notice was sent;

Make a hearing request in writing **postmarked** (if mailed) or received by ED (if delivered by a commercial service, e.g. FedEx or Airborne, or in person) no later than the deadline on the garnishment notice;

If requesting copies of documents, make a request for a hearing, because the making of a document request does not delay a garnishment order;

Provide proof to support any objection made to the existence, amount, or enforceability of the debt, or a claim of legal exclusion or, financial hardship;

Pay any expenses he or she incurs to obtain legal representation and to attend an in-person hearing; and

Initiate any legal action against his or her employer if the employer discharges, refuses to hire, or takes disciplinary action against the debtor based on the garnishment action.

What is an AWG hearing?

An AWG hearing is a procedure in which a hearing official considers any argument and evidence regarding an objection by a debtor to enforcement by garnishment of a debt held by ED. A hearing may be conducted by a review of written materials and other records (often called a "paper hearing" and referred to in this manual as a written records hearing), or by considering both written materials and

records with testimony presented by telephone (a "telephone hearing") or in person (an "in person hearing").

When is a debtor's objection to collection considered to be a request for an AWG hearing?

An objection by a debtor to collection is considered to be an effective request for an AWG hearing if the debtor makes the objection in writing, after a T12 (or other) Notice of Intent to Garnish Wages has been issued to the debtor, and the debtor in that writing refers to the garnishment action. The regulations do not require the debtor to use either a specific form or any specific language to request a hearing.

We treat any written objection sent to the designated AWG hearings branch as a request for a hearing, even if the writing does not use the words "request for hearing."

We treat any other written objection as a request for a hearing if it debtor uses the words "hearing" or "review" and contests either the debt or garnishment action to collect the debt.

When does the debtor receive an oral hearing?

§34.8 Providing a hearing.

(a) We provide a hearing if you submit a **written request for a hearing** concerning the existence, amount, or enforceability of the debt or the rate of wage withholding.

(b) **At our option the hearing may be an oral hearing** under **§34.9** or a paper hearing under §34.10.

(Authority: 31 U.S.C. 3720D)

§34.9 Conditions for an oral hearing

(a) We provide an oral hearing if you—

(1) Request an oral hearing; and

(2) Show in the request a good reason to believe that we cannot resolve the issues in dispute by review of the documentary evidence, by demonstrating that the validity of the claim turns on the credibility or veracity of witness testimony.

(b) If we determine that an oral hearing is appropriate, we notify you how to receive the oral hearing.

(c)(1) At your option, an oral hearing may be conducted either in-person or by telephone conference.

(2) We provide an in-person oral hearing with regard to administrative debts only in Washington D.C.

(3) We provide an in-person oral hearing with regard to debts based on student loan or grant obligations only at our regional service centers in Atlanta, Chicago, or San Francisco.

(4) You must bear all travel expenses you incur in connection with an in-person hearing.

(5) We bear the cost of any telephone calls we place in order to conduct an oral hearing by telephone.

(d)(1) To arrange the time and location of the oral hearings, we ordinarily attempt to contact you first by telephone call to the number you provided to us.

(2) If we are unable to contact you by telephone, we leave a message directing you to contact us within **5 business days** to arrange the time and place of the hearing.

(3) If we can neither contact you directly nor leave a message with you by telephone —

(i) We notify you in writing to contact us to arrange the time and place of the hearing; or

(ii) We select a time and place for the hearing, and notify you in writing of the time and place set for the hearing.

(e) We consider you to have withdrawn the request for an oral hearing, and we will conduct the hearing as a paper hearing, if—

(1) Within 15 days of the date of a written notice to contact us, we receive no response to that notice;

(2) Within five business days of the date of a telephone message to contact us, we receive no response to that message, or

(3) You do not appear in person or by telephone at the hearing set by agreement or by our notice.

(Authority: 31 U.S.C. 3720D)

§34.10 Conditions for a paper hearing.

We provide a paper hearing—

- (a) If you request a paper hearing;
- (b) If you requested an oral hearing, but we determine under section 34.9(e) that you have withdrawn that request

(c) If you fail to appear for a scheduled oral hearing, as provided in section 34.15; or

(d) If we deny a request for an oral hearing because we conclude that, by a review of the written record, we can resolve the issues raised by your objections.

(Authority: 31 U.S.C. 3720D)

What is a timely Request for Hearing? How does a timely Request affect the AWG process?

Hearing official & PCAs determines the timeliness of all hearing requests based on the guidelines established in regulation and renders the decision based on the timeliness of the request for hearing.

§34.11 Timely request for a hearing

(a) A hearing request is timely if—

(1) You mail the request to the office designated in the garnishment notice and the request is postmarked not later than the 30th day following the date of the notice; or

(2) The designated office receives the request not later than the 30th day following the date of the garnishment notice.

(b) If we receive a timely written request from you for a hearing, we will not issue a garnishment order before we—

(1) Provide the requested hearing; and

(2) Issue a written decision on the objections that you raised.

(c) If your written request for a hearing is not timely—

(1) We provide you a hearing; and

(2) We do not delay issuance of a garnishment order unless—

(i) We determine from credible representations in the request that the delay in filing the request for hearing was caused by factors over which you had no control; or

(ii) We have other good reason to delay issuing a garnishment order.

(d) If we do not complete a hearing within 60 days of an untimely request, we suspend any garnishment order until we have issued a decision.

(Authority: 31 U.S.C. 3720D)

Timely hearing request is one Postmarked (if mailed) or received (if not mailed - e.g., fax, commercial delivery service [FedEx] or in person delivery) within 30 days of T12 date on the L106 screen, as evidenced by the postmark date on the Request for Hearing (RFH).

Untimely hearing request is one Postmarked (if mailed) or received (if sent any other way) after the 30 day deadline, as evidenced by the postmark date or receipt date on the RFH.

Timely Request for Hearing (THR/HSF)	Avoided disclosure of default student loan or grant to employer Opportunity to make Voluntary Payments that are reasonable and affordable.
--------------------------------------	---

IF the debtor notifies ED / PCA in **writing** within 30 Calendar days of the **date** of **the Notice of Intent to Garnish**, ED / PCA is responsible for performing the following:

Move the account into THR or HSF as appropriate.

If the request is postmarked (or received, if not mailed) after 30 days from the date of the SO2 letter, but the debtor includes an explanation for missing the deadline, ED must determine whether the delay was excusable based on factors beyond the control of the debtor.

If the request is postmarked (or received, if not mailed) after 30 days from the date of the S02 letter on the L106 screen, and the account has moved into status code: **OW1**, as evidence by the postmark date or fax date on the RFH.

Do not stop a garnishment order that has already been issued if the RFH is **Untimely** or if the RFH is **Timely**, but the debtor is responding to a DCIA AWG notice (T08 or T09) and is currently being garnished at ten (10) % or less under a previous order. ED does not intend to stop outstanding garnishment while it considers objections to increasing the withholding rate to 15% under DCIA authority.

What is the role of the hearing official?

Hearing officials are employees of ED authorized to receive and consider evidence presented by the debtor to support objections to garnishment. To make any findings of fact and conclusions of law needed to determine the validity of the objections raised by the debtor, and to issue a decision for ED on the objections. The hearing official is a loan analyst whose responsibilities do **not** include the collection of the debt; that fact must be presented as necessary and at very least at the start of any oral hearing.

For AWG Hearings conducted by ED, the hearing official is the **final authority** regarding decisions to garnish debtor's wages. The hearing official determines the validity of any objection to garnishment, including objections that the debt is being repaid under a current agreement, that the debt is for any reason not enforceable in the full amount stated in the notice of garnishment, that collection of the debt by garnishment is now barred by law (e.g., bankruptcy stay or recent reemployment), and that garnishment at the rate of 15%, or a lower rate if previously determined appropriate, would cause financial hardship to the debtor and his or her family.

Debtors sometimes object (mistakenly) that the AWG statute(s) require that the hearing official be someone not employed by ED. That requirement applied only to guaranty agencies acting under HEA §488A, and not to ED or any other Federal agency. More basically, debtors may object that due process requires that the hearing official be other than an individual employed by ED. We regard any individual who has no responsibility to collect the debt and does not report to an individual who is responsible for collecting debts to be sufficiently independent to conduct a fair hearing. Note that the hearing official "wears two hats" - both judge as to the evidence and arguments, and representative of ED (by gathering or ensuring that evidence from ED is included and considered to support the validity of the debt and to oppose hardship claims). This is hardly unusual: the Administrative Law Judge or hearing official in Social Security benefit appeals has for decades functioned "under two hats" in those proceedings, which are the most numerous administrative appeal proceedings in the Federal government.

The hearing official has the authority to determine whether the debt is enforceable in the amount claimed in the notice, or that enforcement would cause financial hardship, and to issue any order needed to give effect to that determination, including write-off or reduction in the amount of the debt, reduction or cancellation of any outstanding garnishment order, and return of some or all amounts collected on the debt. The hearing official signs any notice or letter that cancels or reduces the garnishment amount. The decision of the hearing official in an AWG proceeding is the decision of the Secretary, and is the final action of ED for purposes of judicial review.

Because the hearing official is authorized to serve as an impartial adjudicator in considering an objection by a debtor, any prior determination by ED or any prior holder of the loan does not bind the hearing official. Thus, a prior determination by either guarantors or ED staff regarding application for closed school, false certification, or unpaid refund discharge relief do not bind the hearing official, even if that determination was made in the course of the very objection to garnishment which the hearing official is reviewing. Obviously, the hearing official may give reasonable deference to prior determinations by an ED official or guarantor regarding qualification for discharge on these claims. Nevertheless, the hearing official must review that determination and state in the AWG decision whether, on the evidence presented (including the explanation included in an ED official's denial of discharge relief), that discharge determination is reasonable and supported by the evidence.

Consistent with the responsibility to act impartially in conducting a hearing, the hearing official ensures that the debtor has an adequate opportunity to request and receive copies of any documentation that was not already provided by the debtor, that the hearing official will consider in making a determination. For example, if the debtor provides evidence not previously considered by ED in the course of supporting his or her objection, the hearing official may obtain additional evidence related to that objection from other sources (ED records or records of a prior holder). The hearing official, as representative of ED, may include that additional evidence in the record. The hearing official, as judge of the facts and argument, may then consider that evidence.

New Evidence: To ensure fairness to the debtor, the hearing official notifies the debtor when added evidence has been obtained and will be considered, and offers the debtor an opportunity to examine that new evidence, and respond by his or her own additional evidence and arguments. That new evidence may suggest objections to the debtor that the debtor had not raised in the request for hearing. Accordingly, the regulations modify the (old, HEA) practice of requiring all evidence and argument to be raised in the request for hearing, to allow the debtor to raise objections, evidence, and argument after the request for hearing in circumstances in which fairness requires a later deadline. See 34.13(d) for a list of these later deadlines.

In conducting an oral hearing, the hearing official provides the debtor an opportunity to present testimony regarding the objections raised by the debtor. The hearing official may exclude testimony that is repetitive or irrelevant to the objection raised by the debtor.

Role of the Private Collection Agency

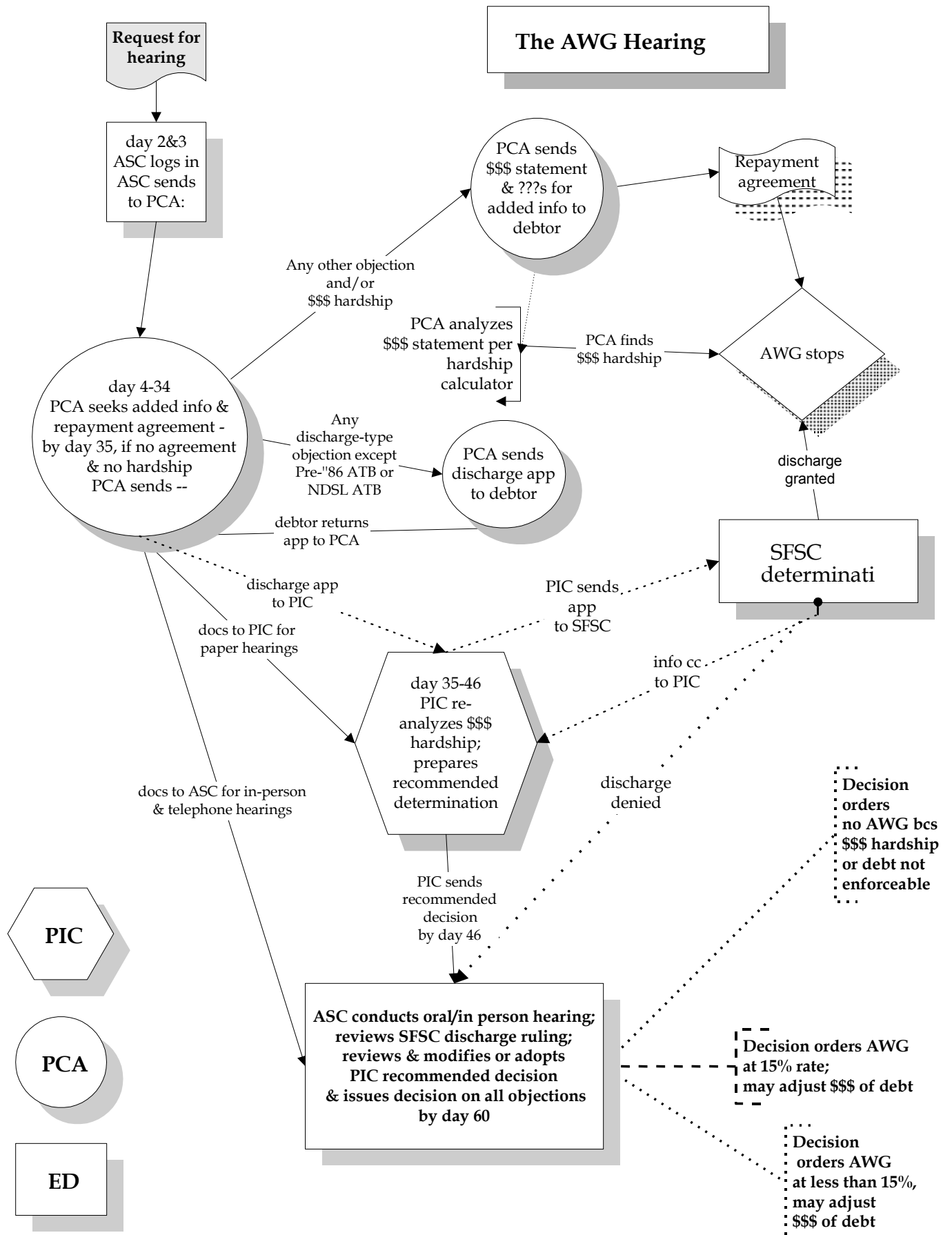
The Private Collection Agency plays key roles in the AWG process: the PCA reviews the debtor's request for review, provides a preliminary evaluation of hardship claims, attempts to reach a voluntary repayment agreement that the debtor can afford, and attempts to secure additional information and documentation that may be needed to properly evaluate the objections raised by the debtor to garnishment and ensure a thorough and meaningful review/hearing on those objections by the Department.

Private Collection Agencies (PCA) Requirements Regarding Administrative Wage Garnishment

▪ **To determine if the debtor is a candidate for AWG, the PCA shall:**

- 1) Verify and correct, as needed, the borrower's name, SSN, and home address;
- 2) Determine and verify or correct, as needed, the payroll address, telephone number, and Federal Identification Number (FIN) of the borrower's employer;
- 3) Determine if debtor is a Federal employee, seasonal worker or self-employed. If debtor is a Federal employee or self-employed, he or she is not a candidate for AWG.
- 4) Verify that account has been with the PCA for a minimum of sixty (60) days;
- 5) Verify that the Letter History or Collector Notepad on the ED-DMCS shows previous successful contact;
- 6) Verify that no agreed payment arrangements were made within 60 calendar days;
- 7) Verify that ED and PCA records show no unresolved dispute;
- 8) Verify there are no split accounts (all debts shall be in same location code);
- 9) Verify that after employment has been verified, the PCA has attempted to contact the debtor both at work and at home.

Debtors whose terms of employment include extended periods of leave followed by a return to service (e.g., teachers) are candidates for AWG; however, seasonal employees with no constant employers, such as farm laborers or independent contractors, should not be considered candidates.



What steps make up the AWG workflow? Which steps does the PCA handle?

- 1st The PCA identifies an account and attempts to negotiate a repayment plan with the debtor. Only after failing to reach an accord with the debtor can the account be considered for garnishment.
- 2nd The PCA verifies home and employment data to ensure debtor meets contractual and departmental guidelines for garnishment.
- 3rd The PCA follows established process to warn debtor of the consequences of refusal to cooperate.
- 4th The PCA submits the accounts for approval by ED to be garnished.
- 5th The debts are reviewed by the AWG Compliance Unit/ Branch to ensure that there are no outstanding disputes and that the debts meet ED and program requirements.
- 6th If the accounts clear this stage, they are electronically signed off on by the AWG Compliance Branch. **Only a designated ED Official / employee can issue an order to garnish wages.**
- 7th The Notice of Intent to Garnish Wages (T12), Request for Hearing Form (RFH), and Financial Disclosure Form are sent to the debtor within 24 hours.
- 8th The Debtor has 30 calendar days from the date of the Notice to submit their request for hearing, in order to avoid the order to garnish wages (Y11) being issued.
- 9th **All RFH must be in writing. No exceptions!**
- 10th Upon receipt of the **written RFH** the PCA / ED determines by the **Postmark Date** on the envelop (if mailed) or the evidence of date of receipt (if fax or other delivery method) if the RFH was timely. If that Date is within 30 days of the Notice date, the RFH is considered Timely (THR). If that date is later, the request is considered Untimely (UTH).
- 11th Move all timely RFHs into subsystem code THR. The exceptions are accounts currently in garnishment (GAR) at 10% receiving a notice to increase to 15% (T08 letter), notice to restart garnishment action (T07 letter), or the notice to increase reduce payment (T09 letter).
- 12th All UTH RFH are to remain in their current AWG Subsystem Status Code; **unless, the RFH is over 59 days old based on the Postmark or Receipt Date.** In such cases the account should be placed in SWG until a decision can be rendered or no new Order to increase to 15% should be issued, in the cases involving request for reconsideration.
- 13th The PCA will attempt to gather all the documentation necessary to provide the debtor an appropriate response. The PCA has exactly **29 days** from receipt of the RFH to establish a Voluntary Repayment Plan (VPY), resolve valid issues of Bankruptcy, Death, Disability, and provide the debtor with proof of claim. All unresolved issues or disputes where the debtor is determined to owe a balance must be submitted to ED or PIC to address.
- 14th ED staff handles all requests for Telephone or In-person Hearings, and all requests for Written Reviews/Hearings are submitted to PIC to prepare a Draft response.
- 15th The Hearing Official will render a decision on all assigned RFHs within **50** days of assignment.

```

graph TD
    A[debtor calls seeks VPY only; no RFH] -.-> D[ask for pay stubs, fin. statement, expense data]
    B[AWG notice mailed] -.-> D
    B -.-> C[RFH filed - BK, Discharge, other]
    C -.-> D
    C -.-> E[obtain records, send to ED, do not continue]
    C -.-> F[advise debtor to file app., send app. to ED, continue with VPY]
    D -.-> G[data not rec'd by 7 business day deadline]
    D -.-> H[data rec'd by 7 business day deadline - compute req'd $$, call debtor]
    G -.-> I[RFH - send V30]
    G -.-> J[No RFH - send V31]
    H -.-> K[contact - debtor agrees to $$]
    H -.-> L[contact - debtor does NOT agree to $$]
    L -.-> M[RFH - send V32]
    L -.-> N[No RFH - send V33]
    N -.-> O[cannot contact debtor by telephone]
    O -.-> P[Mail Pre-Hearing Agreement and Letter]
    K -.-> P
    P -.-> Q[RFH - send V32, No RFH - send V33]
    Q -.-> R[cannot contact debtor by telephone]
    R -.-> P
    P --> End[ ]
  
```

1. Debtor returns **both VPY and \$\$** w/10 days —————→ **Move toVPY/HR3**
2. **VPY only** rec'd, **no \$00** - send **V35** extension 7 days--- Not rec'd————→ Send **V34** & move to **HR1/HR3**
Rec'd —————→ Move to... **VPY/ HR3**
3. **\$\$ only** rec'd, **no VPY**--- send **V39** extension 7 days ---Not rec'd —————→ RFH————→ Send **V37**
Leave in ...**HSF**
No RFH —————→ Send **V36**
Move to ...**HR1**
Rec'd —————→ Move to ...**VPY/HR3**
4. **Neither VPY nor \$\$** ---- RFH————→ Send **V38**. Letter & Leave in...**HSF**
No RFH —————→ Send **V40** Letter & Move to **HR1**

What procedures must the PCA follow to establish a voluntary repayment plan?

Mandatory Procedures for Establishing Voluntary Repayment Plans (Timely Responses-Only) On AWG Accounts Revised: July 18, 2003

Part 1 (Account in AWG Status Code WG1) - Pre-hearing Agreements

If the debtor **contacts** ED/ PCA within **33** days of the **System-recorded Date of the Notice of Intent to Garnish** (AKA S02 / T12 Notice) or while the account is in AWG Subsystem Status Codes: **WG1**, and indicates a desire to enter into a **voluntary repayment program (VPY)** to avoid the garnishment the following procedures **must** be followed. These procedures recognize and rest on several essential principles.

First, the debtor who files a written request for hearing (RFH) regarding his or her objection to garnishment is entitled to a hearing on those objections. As stressed at appropriate points in these procedures, ED and ED representatives must honor the debtor's request for a hearing if agreement cannot be reached promptly with a debtor to repay voluntarily under terms acceptable to the Department, including the terms in the form Repayment Agreement. PCA representatives must therefore take care in their communications with the debtor in the context of an AWG procedure to avoid any appearance of disregarding a RFH filed by the debtor, or commenting negatively on the merits of an objection raised in an RFH.

Secondarily, while attempting to negotiate a VPY, the PCA is to facilitate loan discharges in those instances in which a debtor objects to garnishment, in a duly-filed RFH, on the ground that he or she qualifies for loan discharge relief, but fails to submit required application(s) to support that claim.

Third, bankruptcy law limits the actions of ED and PCA alike, and claims of bankruptcy protection should be investigated promptly to prevent violation of bankruptcy law.

Take the following steps to handle contacts from debtors regarding repayment arrangements:

- 1) Place the account into AWG Subsystem Status Code: **HSF**
- 2) If the debtor submitted an RFH, review the RFH and accompanying materials. Identify the objections.
 - a. Bankruptcy-based objections: if the debtor checked objection 3 or 4 in Part III, page 2 of the RFH, do not attempt to negotiate repayment arrangements at this time. Review any substantiating material as in non- AWG process, contact debtor if necessary to secure needed information or records, and transmit to ED for handling of the RFH.
 - b. Discharge-relief claims: If the debtor checked objection 5, 6, 7, 8, 11, 12 or 14 (loan discharge or cancellation options under the HEA), determine whether the debtor included the required application form, and if so, whether the form was completed.
 - i. If the application is complete, transmit to ED for consideration.
 - ii. If the application is not included or not completed, contact the debtor by telephone and advise the debtor of the need to submit an appropriate, completed

application. This warning can be combined with the initial telephone contact regarding financial data needed to arrange repayment terms.

- iii. Follow the procedures stated below to attempt to arrange repayment agreement with the debtor.
- iv. If the application is received, transmit promptly to ED. ED will provide expedited consideration of discharge/cancellation claims filed in AWG proceedings. If ED approves the application, ED notifies the debtor and the PCA. Cease negotiation to the extent that the obligation to repay the particular debt or debts in question has been cancelled.¹

c. All other objections: Follow the procedures stated below.

- 3) Call the debtor. Orally, advise the debtor that he or she has exactly **7 business days** from the date of that telephone call to **submit** the completed financial disclosure form (enclosed with the Notice of Intent to Garnish), with two (2) current pay stubs from all working members of the household), and documentation of all their family/household monthly expenses. This information must be submitted directly to the party servicing the account (**ED / PCA**).
- 4) Orally, advise the debtor that if the requested financial information is **not** received within seven (**7 business days**) from the date of the telephone call, the garnishment process will continue, including **providing** a hearing, if the debtor has requested a hearing **in writing**.
- 5) If this financial material is not received within the **7 business day deadline**, and the debtor filed a Request for Hearing (**RFH**), request ED to send the debtor **letter V30** but not **to move** the account **out** of **HSE**. **Transmit the RFH and accompanying material on the account to ED for response**. If the debtor did **not** file an RFH, request ED to send letter **V31** and to move the account into **HR1**.
- 6) If this financial material is received within the **7-business day deadline**, the representative receiving the information is to run the data through the AWG Hardship Calculator to determine the amount of the debtor is required to pay.
- 7) Within **3 business days of completing the calculation of amount**, the representative **must** attempt to notify the debtor by **telephone** of the amount required to be paid each month in order to avoid garnishment action.
- 8) If the debtor refuses to pay the amount determined by the calculator, and the debtor filed an RFH, **request ED to send the debtor letter V32. Transmit the RFH and accompanying material to ED for response**. If no RFH filed, **request to ED send the debtor letter V33** and to place the account back into AWG Status Code **HR1**, allowing garnishment action to proceed. Advise the debtor that a written request for a hearing must be submitted in order to receive a hearing on any objection.
- 9) **Whether or not** the representative makes **contact** with the **debtor** by **telephone**, in all cases (except where the debtor contacted regarding the **repayment** amount refuses to pay that amount), mail the form Repayment Agreement (**VPY 7A or 7B**) with cover letter (**letter 7.1**) to the debtor. If the debtor is reached by telephone and agrees to pay the amount determined by the AWG Hardship Calculator, advise the debtor that the Repayment Agreement must be

¹ Thus, for example, loan discharge relief may affect only some, but not all, of the loans ED proposed to collect by AWG. Loan discharge relief does not affect POVR debts. Unpaid refund relief may affect only part of the particular loan debt in question

signed and returned along with the first required payment within the next 10 business days (beginning on the date the agreement is mailed to the debtor). Advise the debtor to read the Agreement carefully; the Agreement explains the consequences of a failure to honor the Agreement. Do not attempt to explain the terms by telephone; presenting only a written explanation to the debtor helps avoid future claims that the contractor staff misrepresented the consequences of non-compliance.

- 10) If the debtor appears willing to enter into the Repayment Agreement, place the account on manual billing on the L103 Billing Screen but leave the account in the AWG Status Code **HSF**.
- 11) Monitor the account closely for the next **10 business days** following the mailing date of the agreement for the **receipt of the payment** and the **signed Repayment Agreement**.
 - A) If neither the Repayment Agreement nor the initial payment is received within ***10 business days***, and **an RFH has been filed**, immediately **request ED to send the debtor letter V38 and submit the RFH and accompanying material on the account to ED for review**. Do not change the AWG Status Code from: **HSF**. If no RFH was filed, immediately request ED to send **letter V40** and to move the account into **HR1**
 - B) If **only** the appropriate **payment amount** is **received** by the 10-day deadline, but not the signed Repayment Agreement, do not remove the account AWG Status Code: **HSF**. Make at least two attempts to telephone the debtor to warn that he or she **must** return the signed Agreement within **7 business days** of the date of the telephone contact, or garnishment proceedings will continue. If unable to contact by telephone, immediately request that ED send letter **V39**,
 - C) **Monitor the account for receipt of the signed Agreement**.
 - 1) If the signed **Repayment Agreement** is still **not** received, and an RFH has been filed, immediately request ED to send the debtor **letter V37, and submit the RFH and accompanying material on the account to ED for response**.
 - 2) **If no RFH was filed, request ED to send letter V36. In addition, moves the account into AWG Status Code: HR1.**
 - D) If **only** the **signed Repayment Agreement** is **received** by the 10-day deadline, but not the first payment, make at least two attempts to contact the debtor by telephone to warn that he or she must submit the first payment within **7 business days** of the date of the telephone contact, or garnishment proceedings will continue. If unable to contact by telephone, request ED to send extension letter **V35**. If the payment is not received, immediately request ED to send the debtor **letter V34** and to move the account into **(HR1)**.
 - E) If the debtor returns both the signed Agreement and the appropriate payment by the deadline(s), and he is scheduled to make **10/15** percent payments, move the account into status code **VPY**. If the debtor is scheduled to pay a reduced amount, place the account into **HR3** and complete the fields for the expected amount and frequency of payment(s).

F) If the debtor fails to honor his reduced Repayment Agreement during this six-month VPY period, force **(FOR)** the account into **(OWR)**.

Letter V30 No Financial Data, RFH – ED will provide Hearing – ED Letter Code: **V30**



FEDERAL STUDENT AID

**UNITED STATES DEPARTMENT OF EDUCATION
ADMINISTRATIVE HEARINGS BRANCH
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303**

Debtor Name
Debtor Address
City, ST Zip

RE: Request for Voluntary Repayment Plan
Account No.: S

This Department recently notified you that we proposed to collect debt(s) you owed to the Department by garnishment of your wages. In response, you requested a hearing on your objection(s) to garnishment, but you also stated that you wished to enter into a voluntary repayment plan in order to avoid the garnishment.

To avoid garnishment by a voluntary agreement to repay your debt, you must agree to repay the debt under an acceptable repayment arrangement. You were advised that you needed to provide evidence of your financial ability so that the amount of the installment payments required under a repayment agreement could be established.

We have not received the necessary financial information from you within the deadline explained earlier. We conclude that you do not intend to enter into a repayment agreement at this time. ED will proceed to provide the hearing you requested. If you requested an oral hearing, we will notify you under separate cover regarding your request.

ASC Staff

Letter V31 No Financial Data, No RFH – ED will AWG – ED Letter Code: **V31**



FEDERAL STUDENT AID

**UNITED STATES DEPARTMENT OF EDUCATION
ADMINISTRATIVE HEARINGS BRANCH
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303**

Debtor Name
Debtor Address
City, ST Zip

RE: Request for Voluntary Repayment Plan
Account No.: S

This Department recently notified you that we proposed to collect debt(s) you owed to the Department by garnishment of your wages. In response, you did not object to the proposed garnishment or request a hearing regarding the garnishment action, but you stated that you wished to enter into a voluntary repayment plan in order to avoid the garnishment.

To avoid garnishment by a voluntary agreement to repay your debt, you must agree to repay the debt under an acceptable repayment arrangement. You were advised that you needed to provide evidence of your financial ability so that the amount of the installment payments required under a repayment agreement could be established.

We have not received the necessary financial information from you within the deadline explained earlier. We conclude that you do not intend to enter into a repayment agreement at this time. ED will proceed with the garnishment of your wages. ED will direct your employer to commence withholding.

You have the right to object to the proposed garnishment and to a hearing on your objection.

You may object for reasons concerning the existence, amount, and enforceability of the debt. You may also object that having amounts equal to <10 / 15%> of your disposable pay withheld from your wages would cause financial hardship for you and your dependents.

You must make a hearing request in writing, and send it to ED at the address listed below:

U.S. Department of Education
Attn: AWG Hearings Branch
61 Forsyth Street, Room 19T89
Atlanta, GA 30303

Any request you make for a hearing in the future will not delay this garnishment action; we will consider your objections and refund garnishment payments if needed.

You may request a hearing by using the Request for Hearing (RFH) Form you were sent with the notice of this action, or you may obtain a Request for Hearing and applications by contacting Customer Service at 1-800-621-3115, or you may go to ED's website at: <http://www.ed.gov/offices/OSFAP/DCS>, **select Forms, then select the application described for that objection.**

Your employer may not discharge you from employment, nor take disciplinary action against you, as a result, of an Order for Withholding; nor can a prospective employer refuse to employ you as a result of this proposed action or existence of an Order for Withholding. If any such actions for such reason are taken against you, you may sue that employer in a state or federal court for reinstatement, back pay, attorney's fees, and punitive damages.

This determination affects only the debt(s) described in the notice of garnishment and is totally separate from any notice of proposed Federal payment offset or garnishment you may have received from a Guarantee Agency. If you received a notice of collection action from a Guarantee Agency, you must present any objections to collection action to that agency.

ASC Staff

Letter V32 VPY Refused, RFH – ED will provide Hearing – ED Letter Code: **V32**



**FEDERAL
STUDENT
AID**

UNITED STATES DEPARTMENT OF EDUCATION
ADMINISTRATIVE HEARINGS BRANCH
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303

Debtor Name
Debtor Address
City, ST Zip

RE: Request for Voluntary Repayment Plan
Account No.: S

This Department recently notified you that we proposed to collect debt(s) you owed to the Department by garnishment of your wages. In response, you requested a hearing on your objection(s) to garnishment, but you also stated that you wished to enter into a voluntary repayment plan in order to avoid the garnishment.

To avoid garnishment by a voluntary agreement to repay your debt, you must agree to repay the debt under an acceptable repayment arrangement. You stated that you were not willing to repay the installment payment amount determined to be appropriate after review of your financial information. We conclude that you do not intend to enter into a repayment agreement acceptable to the Department at this time. ED will proceed to provide the hearing you requested. If you requested an oral hearing, we will notify you under separate cover regarding your request.

ASC Staff

PCA Cover Letter for Pre-Hearing Repayment Agreement

<PCA Letterhead>

This notice, regarding your account with the U.S. Department of Education, is from <PCA etc. >. The Department has placed your account with us for collection.

You have indicated that you wish to avoid garnishment of X% of your disposable pay by making a voluntary arrangement with the Department to repay your defaulted student loan(s) or grant obligation(s) described in the notice of garnishment recently sent to you. The balance of your obligation as of the date of this letter is noted above. The principal portion of that balance will continue to accrue interest. The Department will apply part of your payments to defray costs incurred to collect this obligation.

Enclosed is a proposed Repayment Agreement with the Department that the Department has asked us to send to you. The current garnishment process will be stopped, if, within 10 business days of the date of this letter, you take two steps:

1. If you sign and return that Agreement to the Department <PCA address>, and
2. You send to installment payment amount shown on the enclosed Agreement, to the following address:
<NPC Address>.

If both actions are not taken within this deadline, the process will continue, including the provision of any hearing you may have requested and a decision on your objection(s), unless you agreed to withdraw that request.

Our business hours are: Monday-Thursday 8am-9pm, Friday 8am-5pm and Saturday 8am-12pm (CST). Our phone number is 1 888 XXX-XXXX.

This communication is from a debt collector attempting to collect a debt and any information obtained will be used for that purpose.

**** Please See The Reverse Side Of This Letter For Important Information****

Pre- Hearing Repayment Agreement with the U.S. Department of Education

Note: Read this entire agreement before signing. Retain a copy for your records. Return a signed copy to the address shown on the letter that accompanies this Agreement.

I agree with the U.S. Department of Education that I will repay my obligation to the Department in monthly installments of **<MONTH-PAY>**.

My first payment in the amount of: **\$<MONTH-PAY>** is due **<DUE-DATE>**.

Each monthly payment after that is due by the **<DUE-DATE>** day of each month.

All payments must be forwarded to --

U.S. Department of Education
National Payment Center
P.O. Box 4169
Greenville, TX 75403-4169

I understand that this installment amount of **\$<MONTH-PAY>** applies for the next 6 months. After 6 months, I agree to provide current financial information if the Department requests it. My required installment payment may change based on that information. I agree to pay the installment amount as it may be adjusted by the Department. I agree that failure to provide financial information is a breach of this agreement.

I have been given an opportunity for a hearing to object to garnishment. I now withdraw any request for a hearing that I have filed.

I agree that if I do not honor this agreement, the Department can start garnishing my pay at the rate of 15% of my disposable pay or the installment payment amount then in effect, whichever is less, without giving me further notice or any new opportunity for a hearing before that garnishment starts. I understand that if the Department starts garnishing my wages in the future, I can then request a hearing or reconsideration of my objection(s) to garnishment.

- I agree that I owe the amount stated in the decision on my objection(s) to garnishment.
- The Department will consider any request for hearing or reconsideration I make in the future, but it will not delay or suspend garnishment while it does so;
- I can then obtain a hearing on objections on grounds that --
 - garnishment would cause financial hardship to me and my dependents;
 - I have not breached this agreement;
 - I have not received credit for payments made on the agreement; and
 - I am protected by law from garnishment.
- I may also apply for discharge relief that may be available with respect to this debt.

Signature: _____ Date: _____

[Sign and return this agreement to the **[address indicated below]**. Keep a copy for your records.]

Return Signed Agreement to: U.S. Department of Education
C/O: PCA Address



FEDERAL STUDENT AID

UNITED STATES DEPARTMENT OF EDUCATION
ADMINISTRATIVE HEARINGS BRANCH
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303

Debtor Name
Debtor Address
City, ST Zip

RE: Request for Voluntary Repayment Plan
Account No.: S

This Department recently notified you that we proposed to collect debt(s) you owed to the Department by garnishment of your wages. In response, you did not object to the proposed garnishment or request a hearing on regarding the garnishment action, but you stated that you wished to enter into a voluntary repayment plan in order to avoid the garnishment.

To avoid garnishment by a voluntary agreement to repay your debt, you must agree to repay the debt under an acceptable repayment arrangement. You stated that you were not willing to repay the installment payment amount determined to be appropriate after review of your financial information. We conclude that you do not intend to enter into a repayment agreement acceptable to the Department at this time. ED will proceed with the garnishment of your wages. ED will direct your employer to commence withholding.

You have the right to object to the proposed garnishment and to a hearing on your objection. You may object for reasons concerning the existence, amount, and enforceability of the debt. You may also object that having amounts equal to <10 / 15%> of your disposable pay withheld from your wages would cause financial hardship for you and your dependents.

You must make a hearing request in writing, and send it to ED at the address listed below:

U.S. Department of Education
Attn: AWG Hearings Branch
61 Forsyth Street, Room 19T89
Atlanta, GA 30303

Any request you make for a hearing in the future will not delay this garnishment action; we will consider your objections and refund garnishment payments if needed.

You may request a hearing by using the Request for Hearing (RFH) Form you were sent with the notice of this action, or you may obtain a Request for Hearing and applications by contacting Customer Service at 1-800-621-3115, or you may go to ED's website at: <http://www.ed.gov/offices/OSFAP/DCS>, **select Forms, then select the application described for that objection.**

Your employer may not discharge you from employment, nor take disciplinary action against you, as a result, of an Order for Withholding; nor can a prospective employer refuse to employ you as a result of this proposed action or existence of an Order for Withholding. If any such actions for such reason are taken against you, you may sue that employer in a state or federal court for reinstatement, back pay, attorney's fees, and punitive damages.

This determination affects only the debt(s) described in the notice of garnishment and is totally separate from any notice of proposed Federal payment offset or garnishment you may have received from a Guarantee Agency. If you received a notice of collection action from a Guarantee Agency, you must present any objections to collection action to that agency.

ASC Staff



FEDERAL STUDENT AID

UNITED STATES DEPARTMENT OF EDUCATION
ADMINISTRATIVE HEARINGS BRANCH
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303

Debtor Name
Debtor Address
City, ST Zip

RE: Request for Voluntary Repayment Plan
Account No.: S

This Department recently notified you that we proposed to collect debt(s) you owed to the Department by garnishment of your wages. In response, you stated that you wished to enter into a voluntary repayment plan in order to avoid the garnishment.

To avoid garnishment by a voluntary agreement to repay your debt, you must sign and return the repayment agreement sent to you, and make the first payment required under that agreement, within deadlines explained earlier to you. Although you signed and returned the repayment agreement, you did not submit the required repayment amount, within required deadlines, despite extension of the deadline. You have breached the agreement, and ED will proceed with the garnishment of your wages. ED will direct your employer to commence withholding.

You have the right to object to the proposed garnishment and to a hearing on your objection. If you have already filed a request for hearing, you withdrew that request in the agreement you signed. You may object in the future for reasons concerning the existence, amount, and enforceability of the debt. However, in the repayment agreement you signed, you also agreed that no objection will be considered to the existence of any debt listed in the notice of proposed garnishment, and the amount owed on the listed debt(s) as of the date of that notice. You may raise other objections to collection of the listed debt(s), including claims that you may qualify for loan discharge relief. You may also object that having amounts equal to <10 / 15%> of your disposable pay withheld from your wages would cause financial hardship for you and your dependents.

You must make a hearing request in writing, and send it to ED at the address listed below:

U.S. Department of Education
Attn: AWG Hearings Branch
61 Forsyth Street, Room 19T89
Atlanta, GA 30303

Any request you make for a hearing in the future will not delay this garnishment action; we will consider your objections and refund garnishment payments if needed.

You may request a hearing by using the Request for Hearing (RFH) Form you were sent with the notice of this action, or you may obtain a Request for Hearing and applications by contacting Customer Service at 1-800-621-3115, or you may go to ED's website at: <http://www.ed.gov/offices/OSFAP/DCS/> **select Forms, then select the Request for Hearing Form and any application described for an objection raised in your Request for Hearing.**

Your employer may not discharge you from employment, nor take disciplinary action against you, as a result, of an Order for Withholding; nor can a prospective employer refuse to employ you as a result of this proposed action or existence of an Order for Withholding. If any such actions for such reason are taken against you, you may sue that employer in a state or federal court for reinstatement, back pay, attorney's fees, and punitive damages.

ASC Staff

Letter V35 VPY but no \$\$ (Dollars), Extension - ED Letter Code: V35



**FEDERAL
STUDENT
AID**

UNITED STATES DEPARTMENT OF EDUCATION
ADMINISTRATIVE HEARINGS BRANCH
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303

Debtor Name
Debtor Address
City, ST Zip

RE: Request for Voluntary Repayment Plan
Account No.: S

This Department recently notified you that we proposed to collect debt(s) owed to the Department by garnishment of your wages. In response, you did not object to the proposed garnishment, but stated that you wished to enter into a voluntary repayment plan in order to avoid the garnishment of your wages. This letter is in response to your request.

To avoid garnishment by a voluntary agreement to repay your debt, you must sign and return the repayment agreement sent to you, and make the first payment required under that agreement, within deadlines explained earlier to you. We have received your signed repayment agreement letter, but not the agreed upon payment. If we do not receive your payment within 7 business days of the date of this letter, ED will proceed with the garnishment of your wages at the rate specified in the agreement.

ASC Staff

Letter V36 \$\$ (Dollars), No VPY, No RFH – ED will AWG – ED Letter Code: V36



FEDERAL STUDENT AID

UNITED STATES DEPARTMENT OF EDUCATION
ADMINISTRATIVE HEARINGS BRANCH
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303

Debtor Name
Debtor Address
City, ST Zip

RE: Request for Voluntary Repayment Plan
Account No.: S

This Department recently notified you that we proposed to collect debt(s) you owed to the Department by garnishment of your wages. In response, you did not object to garnishment or request a hearing regarding the garnishment action, but you stated that you wished to enter into a voluntary repayment plan in order to avoid the garnishment.

To avoid garnishment by a voluntary agreement to repay your debt, you must sign and return the repayment agreement we sent to you, and make the first payment required under that agreement, within deadlines explained earlier to you. Although you submitted a payment, you did not return the signed repayment agreement, within required deadlines, despite extension of the deadline. ED will proceed with the garnishment of your wages. ED will direct your employer to commence withholding.

You have the right to object to the proposed garnishment and to a hearing on your objection. You may object for reasons concerning the existence, amount, and enforceability of the debt. You may also object that having amounts equal to <10 / 15%> of your disposable pay withheld from your wages would cause financial hardship for you and your dependents.

You must make a hearing request in writing, and send it to ED at the address listed below:

U.S. Department of Education
Attn: AWG Hearings Branch
61 Forsyth Street, Room 19T89
Atlanta, GA 30303

Any request you make for a hearing in the future will not delay this garnishment action; we will consider your objections and refund garnishment payments if needed.

You may request a hearing by using the Request for Hearing (RFH) Form you were sent with the notice of this action, or you may obtain a Request for Hearing and applications by contacting Customer Service at 1-800-621-3115, or you may go to ED's website at: <http://www.ed.gov/offices/OSFAP/DCS/>, **select Forms, then select the Request for Hearing (RFH) form and any application described for an objection you raised in your Request for Hearing.**

Your employer may not discharge you from employment, nor take disciplinary action against you, as a result, of an Order for Withholding; nor can a prospective employer refuse to employ you as a result of this proposed action or existence of an Order for Withholding. If any such actions for such reason are taken against you, you may sue that employer in a state or federal court for reinstatement, back pay, attorney's fees, and punitive damages.

ASC Staff

Letter V37 \$\$ (Dollars), No VPY, RFH – ED will provide Hearing – ED Letter Code: V37



**FEDERAL
STUDENT
AID**

**UNITED STATES DEPARTMENT OF EDUCATION
ADMINISTRATIVE HEARINGS BRANCH
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303**

Debtor Name
Debtor Address
City, ST Zip

RE: Request for Voluntary Repayment Plan
Account No.: S

This Department recently notified you that we proposed to collect debt(s) you owed to the Department by garnishment of your wages. In response, you requested a hearing on your objection(s) to garnishment, but you also stated that you wished to enter into a voluntary repayment plan in order to avoid the garnishment.

To avoid garnishment by a voluntary agreement to repay your debt, you must sign and return the repayment agreement we sent to you, and make the first payment required under that agreement, within deadlines explained earlier to you. Although you submitted a payment, you did not return the signed repayment agreement, within required deadlines, despite extension of the deadline. ED will proceed to provide the hearing you requested. If you requested an oral hearing, we will notify you under separate cover regarding your request.

ASC Staff

Letter V38 No \$\$ (Dollars), No VPY, RFH – ED will provide Hearing – ED Letter Code: V38



**FEDERAL
STUDENT
AID**

**UNITED STATES DEPARTMENT OF EDUCATION
ADMINISTRATIVE HEARINGS BRANCH
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303**

Debtor Name
Debtor Address
City, ST Zip

RE: Request for Voluntary Repayment Plan
Account No.: S

This Department recently notified you that we proposed to collect debt(s) you owed to the Department by garnishment of your wages. In response, you requested a hearing on your objection(s) to garnishment, but you also stated that you wished to enter into a voluntary repayment plan in order to avoid the garnishment.

To avoid garnishment by a voluntary agreement to repay your debt, you must sign and return the repayment agreement we sent to you, and make the first payment required under that agreement, within deadlines explained earlier to you. We received neither a signed repayment agreement nor a required payment within the deadlines explained earlier. ED will proceed to provide the hearing you requested. If you requested an oral hearing, we will notify you under separate cover regarding your request.

ASC Staff

Letter V39 \$\$ (Dollars) But No VPY, Extension – ED Letter Code: V39



**FEDERAL
STUDENT
AID**

**UNITED STATES DEPARTMENT OF EDUCATION
ADMINISTRATIVE HEARINGS BRANCH
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303**

Debtor Name
Debtor Address
City, ST Zip

RE: Request for Voluntary Repayment Plan
Account No.: S

This Department recently notified you that we proposed to collect debt(s) owed to the Department by garnishment of your wages. In response, you stated that you wished to enter into a voluntary repayment plan in order to avoid the garnishment of your wages. This letter is in response to your request.

To avoid garnishment by a voluntary agreement to repay your debt, you must sign and return the repayment agreement sent to you, and make the first payment required under that agreement, within deadlines explained earlier to you. We have received a payment from you, but we have not received a signed repayment agreement. If we do not receive your signed repayment agreement within 7 business days of the date of this letter, ED will proceed with the garnishment of your wages at the rate specified in the agreement. If you requested a hearing, ED will provide a hearing. If you requested an oral hearing, ED will contact you regarding that request.

ASC staff

Letter V40 No VPY, No \$\$ & No RFH – ED will AWG –



**FEDERAL
STUDENT
AID**

UNITED STATES DEPARTMENT OF EDUCATION
ADMINISTRATIVE HEARINGS BRANCH
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303

Debtor Name
Debtor Address
City, ST Zip

RE: Request for Voluntary Repayment Plan
Account No.: S

This Department recently notified you that we proposed to collect debt(s) you owed to the Department by garnishment of your wages. In response, you did not object to the proposed garnishment or request a hearing regarding the garnishment action, but stated that you wished to enter into a voluntary repayment plan in order to avoid the garnishment.

To avoid garnishment by a voluntary agreement to repay your debt, you must sign and return the repayment agreement sent to you, and make the first payment required under that agreement, within deadlines explained earlier to you. You have neither returned the signed agreement nor made the required initial payment. ED will proceed with the garnishment of your wages. ED will direct your employer to commence withholding.

You have the right to object to the proposed garnishment and to a hearing on your objection. You may object for reasons concerning the existence, amount, and enforceability of the debt. You may also object that having amounts equal to <10 / 15%> of your disposable pay withheld from your wages would cause financial hardship for you and your dependents.

You must make a hearing request in writing, and send it to ED at the address listed below:

U.S. Department of Education
Attn: AWG Hearings Branch
61 Forsyth Street, Room 19T89
Atlanta, GA 30303

Any request you make for a hearing in the future will not delay this garnishment action; we will consider your objections and refund garnishment payments if needed.

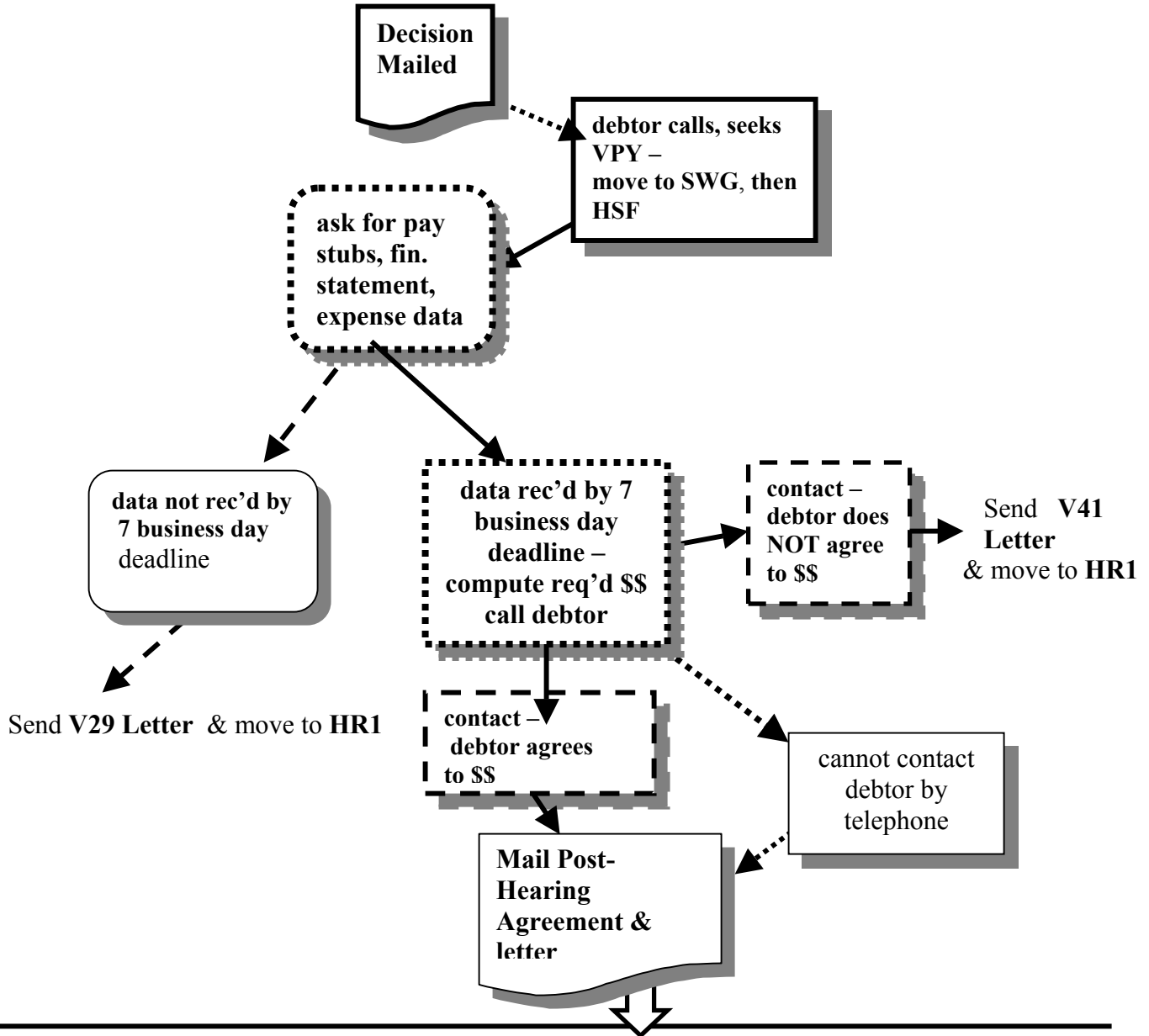
You may request a hearing by using the Request for Hearing (RFH) Form you were sent with the notice of this action, or you may obtain a Request for Hearing and applications by contacting Customer Service at 1-800-621-3115, or you may go to ED's website at: <http://www.ed.gov/offices/OSFAP/DCS/>, **select Forms, then select the application described for that objection.**

Your employer may not discharge you from employment, nor take disciplinary action against you, as a result, of an Order for Withholding; nor can a prospective employer refuse to employ you as a result of this proposed action or existence of an Order for Withholding. If any such actions for such reason are taken against you, you may sue that employer in a state or federal court for reinstatement, back pay, attorney's fees, and punitive damages.

This determination affects only the debt(s) described in the notice of garnishment and is totally separate from any notice of proposed Federal payment offset or garnishment you may have received from a Guarantee Agency. If you received a notice of collection action from a Guarantee Agency, you must present any objections to collection action to that agency.

ASC Staff

Post Hearing VPY Flowchart – No Hardship Claimed



1. Debtor returns **both VPY and \$\$** w/10 days —————> Move to **VPY or HR3**
2. **VPY only** rec'd, **no \$** - send **V42 Letter** extension 7 days -----Not rec'd —————> **Send V44 Letter & Move to ... HR1 / HR3**
Rec'd —————> Move to ... **VPY/HR3**
3. **\$\$ only** rec'd, **no VPY**---send **V43 Letter** extension 7 days ----Not rec'd —————> **Send V44 Letter & Move to HR1**
Rec'd —————> Move to... **VPY / HR3**
4. **Neither VPY nor \$\$** —————> **Send V44 Letter & Move to HR1**

Part 2 (Account in AWG Status Code HR1) – Post-hearing, no hardship claim

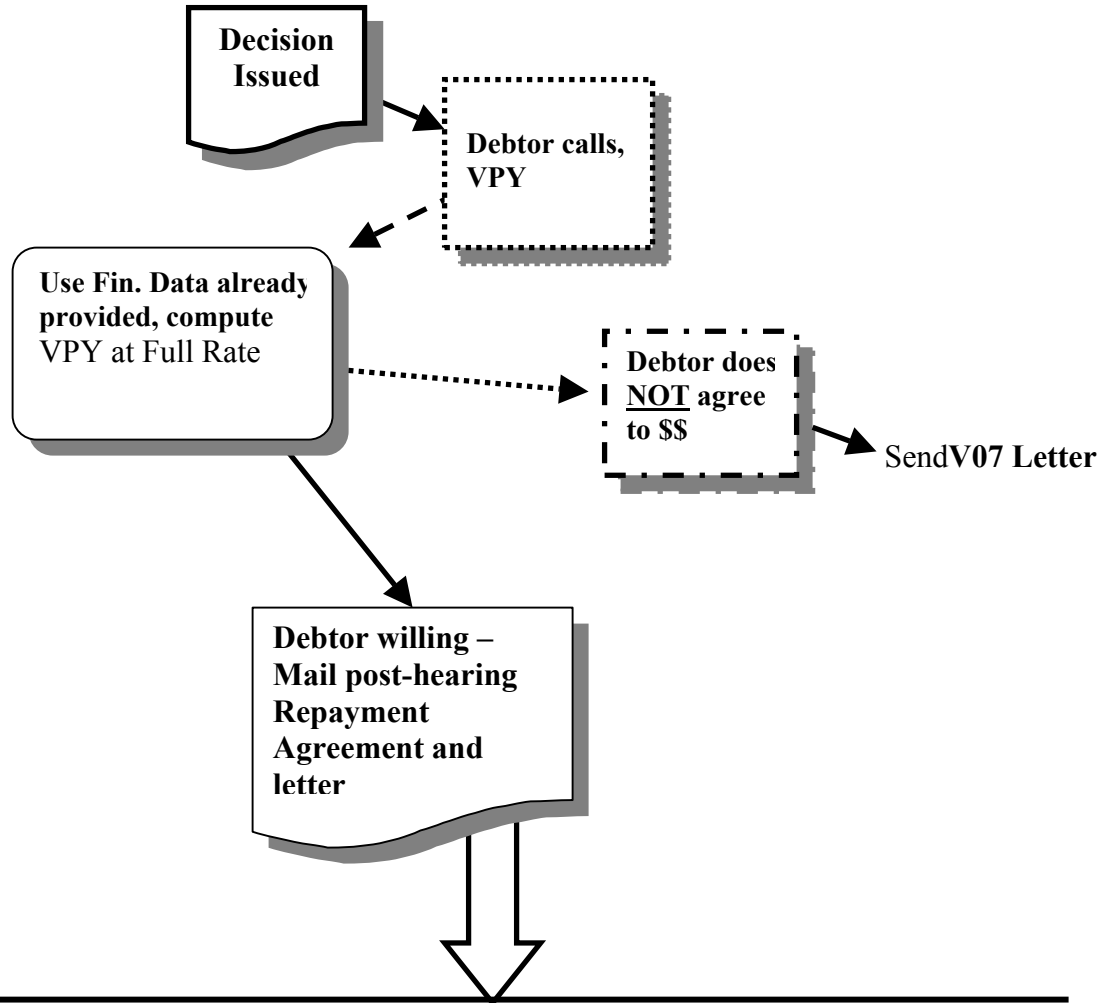
Follow these Part 2 procedures to establish voluntary repayment plans (VPY) after a hearing decision has been rendered if the debtor timely filed the RFH, and did not assert **Financial Hardship** as a defense to garnishment. These accounts would have been placed in AWG Status Code: **HR1** by the Hearing Official. The decision advises the debtor to call the PCA or ED to establish a voluntary repayment plan. The following procedures must be followed with these types of cases.

1. If the debtor calls and requests a repayment arrangement at the rate equal to 15 percent his or her disposable pay:
 - Move the account into AWG Subsystem Status Code: **SWG**
 - Then move account into AWG Subsystem Status Code: **HSF**
 - Orally advise the debtor that he or she has exactly 7 business days from the date of that telephone call to **submit the financial disclosure form** enclosed with the **Notice of Intent to Garnish, 2 current** pay stubs from **all working members** of the **household**, and documentation of **all family/household monthly expenses**. This information must be submitted directly to the party servicing the account (**ED / PCA**).
 - Advise the debtor that if the requested information is not received within Seven-7 business days from the point of contact, the garnishment process would continue.
2. If the financial information is not received within 7 business days, **request ED to send letter V29 and to move the account into HR1.**
3. If the information is received within the 7-business day deadline, the representative receiving the information will run the data through the AWG Hardship Calculator to determine the amount of the debtor must pay.
 - a) Within **3 business days of making that calculation**, the representative must make at least two attempts to notify the debtor by telephone of the amount required to be paid each month in order to avoid garnishment action.
 - b) If contact with the debtor is made and the debtor refuses to pay the amount determined, request ED to send **letter V41** and to move to **HR1**.
 - c) Unless the debtor states that he or she refuses to pay the required amount, mail the form Repayment Agreement **8 A/B** with cover **letter 8.1** to the debtor, even if the debtor could not be reached by telephone to convey the payment amount required. If the debtor is reached by telephone and agrees to pay the amount determined by the AWG Hardship Calculator, advise the debtor that the Repayment Agreement must be signed and returned along with the first required payment within the 10 business days of the date the Agreement is mailed to the debtor. Advise the debtor to read the Agreement carefully; the Agreement explains the consequences of a failure to honor the Agreement. Do not attempt to explain the terms by telephone; presenting only a written explanation to the debtor helps avoid future claims that the contractor staff misrepresented the consequences of non-compliance.
 - d) If the debtor agrees to pay the amount determined by the AWG Calculator, place the account on manual billing on the L103 Billing Screen **but** leave the account in the AWG Status Code

HSE. Forward the debtor **letter 8.1** with the appropriate **Repayment Agreement 8 A/B** to sign and return.

- e) Monitor the account closely for the next **10 business days** for the receipt of the payment and the signed Repayment Agreement.
- 1) If **neither** the Repayment Agreement nor the payment is received within 10 business days of the mailing date of the Agreement to the debtor, **immediately request ED to send letter V44, and to move the account into HR1.**
 - 2) If **only** the appropriate **payment amount** is **received** within the 10-day deadline, **but not** the signed Repayment Agreement, advise the debtor that he or she must return the signed agreement within **7 business days** to avoid garnishment at the full rate of **15%**, request ED to send **letter V43**. If the Repayment Agreement is **not** received within the **7 business day** deadline, **immediately request ED to send letter V44 to the debtor, and to move the account into AWG Status Code: HR1.**
 - 3) If **only** the signed **Repayment Agreement** is received within the **10-day** deadline, but not the required payment, move the account into appropriate code: **HR1 / HR3** and advise the debtor that he or she must make the required payment by within 7 business days of date subsystem updated in order to avoid garnishment for the amount agreed upon. Request ED to send **letter V42**. If the first payment is not received within 7 business days, immediately request ED to send **letter V44** to the debtor, and to move the account in AWG Status Code: **HR3** to AWG Status Code: **OWR** by entering (**FOR**)
 - 4) If the debtor returns **both** the signed Repayment Agreement and the required payment within the deadline, and is scheduled to make **15** percent payments, leave the account in AWG Status Code: **VPY**. If the debtor is scheduled to pay a reduced amount, place the account into **HR3** and complete the fields for the expected amount and frequency of payment(s).

Post Hearing VPY Flowchart –Hardship Denied



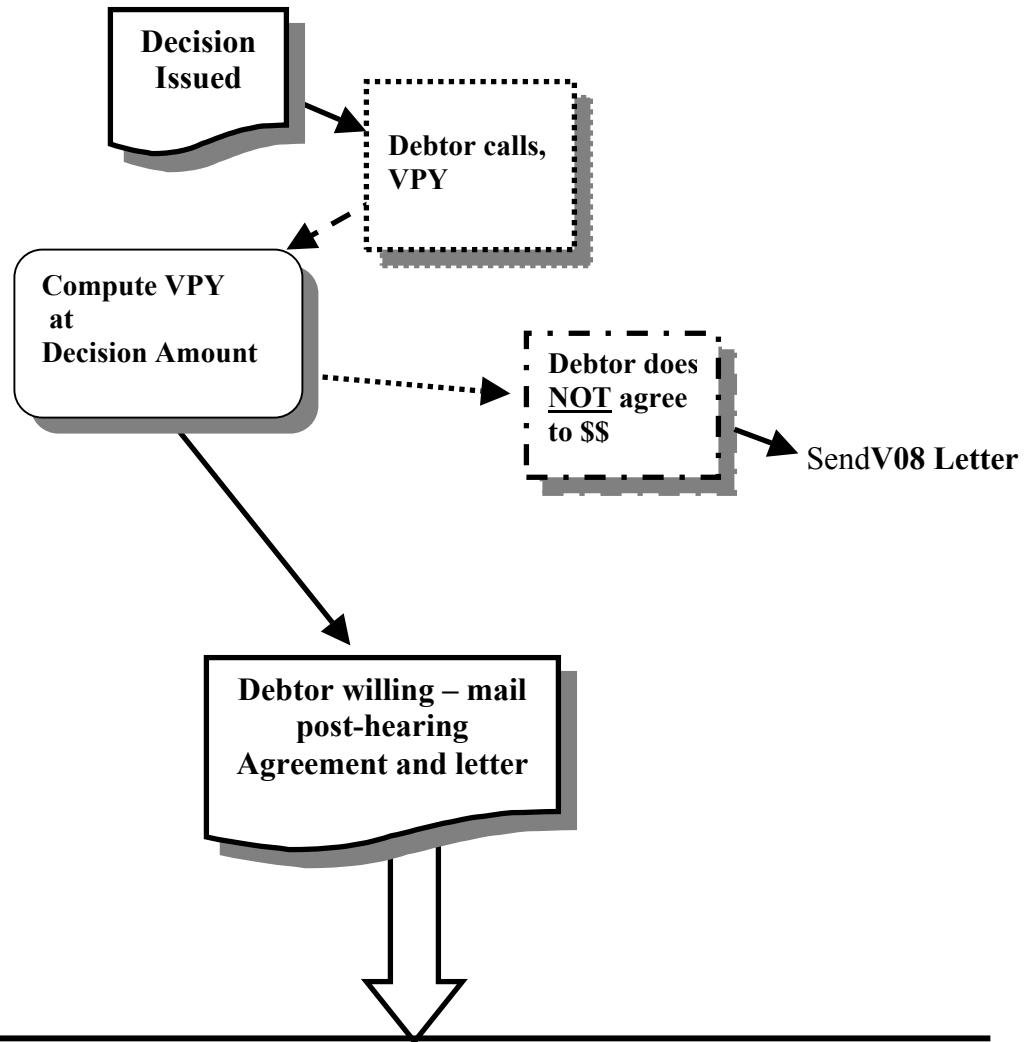
1. Debtor returns **both VPY and \$** w/10 days —————→ Move to**VPY/HR3**
2. **VPY only** rec'd, **no \$** - send **V42 Letter** extension 7 days --- Not rec'd → **Send V44 Letter & Move to....HR1 / HR3**
Rec'd —————→ Move to **.VPY/HR3**
3. **\$ only** rec'd, **no VPY**---send **V43 Letter** extension 7 days ----Not rec'd —————→**Send V44 Letter & Move to HR1**
Rec'd —————→ Move to...**VPY/HR3**
4. **Neither VPY nor \$** —————→ **Send V44 Letter & Move to ...HR1**

Part 3 (Accounts in AWG Status Code HR1) Post-hearing, hardship claim denied

Follow these Part 3 procedures where the debtor calls ED/or its representative after a decision has been rendered rejecting a hardship claim, and wishes to pay at the full rate as specified in the Hearing Decision:

1. Advise the debtor he must pay the amount indicated in the hearing decision. If the debtor refuses, request ED to send **letter V07**, and to move the account into **HR1**.
2. If the debtor agrees to pay the amount indicated, send the debtor the appropriate repayment agreement and move the account into AWG Status Code: **SWG**, then to **HSF**, and manually bill the account at that amount. Advise the debtor that if the Repayment Agreement and the initial payment are not received within **10 business days from the date of the mailing of the agreement, garnishment action will proceed**.
3. Monitor the account closely for the next **10 business days** for the receipt of the initial payment and the signed Repayment Agreement.
4. If **neither** Agreement nor payment is received by the deadline, request ED to send **letter V44** and to move the account into **HR1**.
5. If **only** the appropriate **payment amount** is **received** within the 10-day deadline, but not the signed Agreement, advise the debtor that he or she must return the signed Agreement within 7 business days to avoid garnishment at the full rate of **15%**, and request ED to send **letter V43**. Monitor the account to determine whether Repayment Agreement is received within that deadline. If Repayment Agreement is not received within the 7 business day deadline, **immediately request ED to send letter V44 to the debtor, and to move the account into AWG Status Code: HR1**.
6. If **only** the **signed Agreement** is **received** within the 10-day deadline, but not the required payment, **move** the account into appropriate code: **HR1** and advise the debtor that he or she must make the required payment within 7 business days of date subsystem updated in order to avoid garnishment for the amount agreed upon. Request ED to send **letter V42** to the debtor. Monitor the account to determine whether payment is received within the deadline. If payment not received by deadline, **immediately request ED to send the letter V44 to debtor**.
7. If the debtor returns both the signed Agreement and the payment, and he is scheduled to make **15** percent payments, move the account into AWG Status Code: **VPY**.
8. The debtor may not negotiate the payment amounts required, but only the dates on which payments are due.

Post Hearing VPY Flowchart – Partial Hardship



-
1. Debtor returns **both VPY and \$\$** w/10 days —————> Move to**HR3**
 2. **VPY only** rec'd, **no \$** - send **V42 Letter** extension 7 days -----Not rec'd————> **Send V44 Letter**
 & Move to **HR3** & Force (**FOR**) the **HR3** into **OWR**
 Rec'd —————> Move to ...**HR3**
 3. **\$\$ only** rec'd, **no VPY**---send **V43 Letter** extension 7 days -----Not rec'd————> **Send V44 Letter**
 & Move to Move to **HR3** & Force (**FOR**) the **HR3** into **OWR**
 Rec'd —————> Move to...**HR3**.
 4. **Neither VPY nor \$\$**————> **Send V44 Letter** & Move to **HR3** & Force (**FOR**)
 the **HR3** into **OWR**

Part 4 (Accounts in AWG Status Code HR3) Post-hearing, hardship partially allowed

Follow these Part 4 procedures where the debtor calls ED/or its representative after a decision has been rendered partially allowing a hardship claim, and wishes to pay the amount specified in the Hearing Decision.

1. If the debtor is **not** willing to pay the amount specified in the hearing decision, request ED to send **letter V08** to the debtor and to force (**FOR**) the account into **OWR**.
2. If the debtor is **willing** to pay the amount specified in the hearing decision, leave the account into AWG Status Code: **HR3**, **manually bill the account, update the L140 screen** by completing the fields for the expected amount and frequency of payment(s), and send the debtor **letter 8.1** and the **Repayment Agreement 8 A/B**.
3. Advise the debtor that if both the Repayment Agreement and the initial payment are not received within **10 business days from the date of the mailing of the Agreement to the debtor, garnishment action will proceed**.
4. Monitor the account closely for the next **10 business days** for the receipt of the initial payment and the signed Repayment Agreement.
 - 1) If **neither** Agreement nor payment is received by the deadline, ask ED to send **letter V44** sent to the debtor and to force (**FOR**) the account into **OWR**.
 - 2) If **only** the appropriate **payment amount** is received within the 10-day deadline, but not the signed Agreement, advise the debtor that he or she must return the signed Agreement within 7 business days to avoid garnishment action, request ED to send letter **V43** to the debtor, leave the account into AWG Status Code: **HR3** and **monitor the account for submission of the Repayment Agreement by the deadline. If the Repayment Agreement is not received by the deadline, immediately request ED to send letter V44 to debtor, and to force (FOR) the account into OWR.**
 - 3) If **only** the signed Agreement is received within the 10-day deadline, but not the required payment, move the account into appropriate code: **HR3** and advise the debtor that he or she must make the required payment within 7 business days of date subsystem updated in order to avoid garnishment for the amount agreed upon, request ED to send **letter V42** to the debtor. **Monitor the account for submission of the required payment by the deadline. If the payment is not received by the deadline, immediately request ED to send letter V44 to debtor and force (FOR) the account into OWR.**
 - 4) If the debtor returns **both** the signed Repayment Agreement and the required payment within the 10 business day deadline, **and he is scheduled to pay less than 10/15 percent payments**, leave the account in AWG Status Code: **HR3**. **If the payment is not received by the deadline, immediately request ED to send letter V44 to debtor and to force (FOR) the account into OWR.**
 - 5) **The debtor may not negotiate payment amounts, only dates on which payments are due.**

Note: The debtor must return the signed Repayment Agreement and make an initial payment on the account. The payments can be set up per pay period or by the month. Furthermore, the debtor must be

AWG PCA Hearings Support Manual – January 2005

made aware of the fact that all voluntary repayment arrangements are subject to review and adjustments every six months. All Repayment Agreements must be returned to the Department or to the PCA, which remits to the Department for inclusion in the debtor's records.

Generally, debtors who make untimely requests for a hearing are not given an option after the hearing decision to avoid garnishment by agreeing to repay voluntarily. These debtors may agree to pay voluntarily an amount in addition to that being withheld.

Exceptions: Debtors who make untimely hearing requests and who are currently being garnished in excess of 25% of their disposable pay (this may occur only for child support orders) can be given an opportunity to repay voluntarily and avoid ED garnishment. Debtors who are determined in the hearing decision to have proven that ED garnishment in any amount would pose a hardship may also be given an opportunity to repay voluntarily to avoid (subsequent) garnishment.

Letter V29 Post Hearing Financial Data Not Received – ED will AWG –



**FEDERAL
STUDENT
AID**

**UNITED STATES DEPARTMENT OF EDUCATION
ADMINISTRATIVE HEARINGS BRANCH
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303**

Debtor Name
Debtor Address
City, ST Zip

RE: Request for Voluntary Repayment Plan
Account No.: S

This Department recently issued a decision on your objection to garnishment. You indicated that you wished to avoid garnishment by entering into a voluntary repayment plan in order to avoid the garnishment.

To avoid garnishment by a voluntary agreement to repay your debt, you must agree to repay the debt under an acceptable repayment arrangement. You were advised that you needed to provide evidence of your financial ability so that the amount of the installment payments required under a repayment agreement could be established.

We have not received the necessary financial information from you within the deadline explained earlier. We conclude that you do not intend to enter into a repayment agreement at this time. ED will proceed with the garnishment of your wages.

The decision explained your rights with respect to seeking reconsideration and asserting financial hardship. You must make a request for hearing or reconsideration in writing, and send it to ED at the address listed below:

U.S. Department of Education
Attn: AWG Hearings Branch
61 Forsyth Street, Room 19T89
Atlanta, GA 30303

Any request you make for a hearing or reconsideration in the future will not delay this garnishment action; we will consider your objections and refund garnishment payments if needed.

You may request a hearing or reconsideration by using the Request for Hearing (RFH) Form you were sent with the notice of this action, or you may obtain a Request for Hearing and applications by contacting Customer Service at 1-800-621-3115, or you may go to ED's website at: <http://www.ed.gov/offices/OSFAP/DCS>, select Forms, then select the Request for Hearing Form and any application described for an objection raised in your Request for Hearing.

Your employer may not discharge you from employment, nor take disciplinary action against you, as a result, of an Order for Withholding; nor can a prospective employer refuse to employ you as a result of this proposed action or existence of an Order for Withholding. If any such actions for such reason are taken against you, you may sue that employer in a state or federal court for reinstatement, back pay, attorney's fees, and punitive damages.

Administrative Hearings Branch

Letter V41 Post Hearing VPY Refused – ED will AWG



**FEDERAL
STUDENT
AID**

UNITED STATES DEPARTMENT OF EDUCATION
ADMINISTRATIVE HEARINGS BRANCH
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303

Debtor Name
Debtor Address
City, ST Zip

RE: Request for Voluntary Repayment Plan
Account No.: S

This Department recently issued a decision on your objection to garnishment. You indicated that you wished to avoid garnishment by entering into a voluntary repayment plan in order to avoid the garnishment.

You were then notified of the installment payment amount that was acceptable to the Department, based on your financial information. You stated that you were not willing to repay that installment amount. We conclude that you do not intend to enter into a repayment agreement acceptable to the Department at this time. ED will proceed with the garnishment of your wages. ED will direct your employer to commence withholding.

The decision explained your rights with respect to seeking reconsideration and asserting financial hardship. You must make a request for hearing or reconsideration in writing, and send it to ED at the address listed below:

U.S. Department of Education
Attn: AWG Hearings Branch
61 Forsyth Street, Room 19T89
Atlanta, GA 30303

Any request you make for a hearing or reconsideration in the future will not delay this garnishment action; we will consider your objections and refund garnishment payments if needed.

You may request a hearing or reconsideration by using the Request for Hearing (RFH) Form you were sent with the notice of this action, or you may obtain a Request for Hearing and applications by contacting Customer Service at 1-800-621-3115, or you may go to ED's website at: <http://www.ed.gov/offices/OSFAP/DCS>, select Forms, then select the Request for Hearing Form and any application described for an objection raised in your Request for Hearing.

Your employer may not discharge you from employment, nor take disciplinary action against you, as a result, of an Order for Withholding; nor can a prospective employer refuse to employ you as a result of this proposed action or existence of an Order for Withholding. If any such actions for such reason are taken against you, you may sue that employer in a state or federal court for reinstatement, back pay, attorney's fees, and punitive damages.

Administrative Hearings Branch

**Letter V07 Post Hearing VPY Refused
No Hardship Proven – ED will AWG**



**FEDERAL
STUDENT
AID**

**UNITED STATES DEPARTMENT OF EDUCATION
ADMINISTRATIVE HEARINGS BRANCH
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303**

Debtor Name
Debtor Address
City, ST Zip

RE: Request for Voluntary Repayment Plan
Account No.: S

This Department recently issued a decision on your objection to garnishment, in which the Department concluded that your objection on hardship grounds was not proven. You indicated that you wished to avoid garnishment by entering into a voluntary repayment plan in order to avoid the garnishment.

You were then notified of the installment payment amount that was acceptable to the Department, based on your financial information and the hearing decision entered on your objection. You stated that you were not willing to repay that installment amount. We conclude that you do not intend to enter into a repayment agreement acceptable to the Department at this time. ED will proceed with the garnishment of your wages. ED will direct your employer to commence withholding.

The decision explained your rights with respect to seeking reconsideration and asserting financial hardship. You must make a request for hearing or reconsideration in writing, and send it to ED at the address listed below:

U.S. Department of Education
Attn: AWG Hearings Branch
61 Forsyth Street, Room 19T89
Atlanta, GA 30303

Any request you make for a hearing or reconsideration in the future will not delay this garnishment action; we will consider your objections and refund garnishment payments if needed.

You may request a hearing or reconsideration by using the Request for Hearing (RFH) Form you were sent with the notice of this action, or you may obtain a Request for Hearing and applications by contacting Customer Service at 1-800-621-3115, or you may go to ED's website at: <http://www.ed.gov/offices/OSFAP/DCS>, select Forms, then select the Request for Hearing Form and any application described for an objection raised in your Request for Hearing.

Your employer may not discharge you from employment, nor take disciplinary action against you, as a result, of an Order for Withholding; nor can a prospective employer refuse to employ you as a result of this proposed action or existence of an Order for Withholding. If any such actions for such reason are taken against you, you may sue that employer in a state or federal court for reinstatement, back pay, attorney's fees, and punitive damages.

Administrative Hearings Branch

**Letter V08 Post Hearing VPY Refused
Partial Hardship Proven – ED will AWG**



**FEDERAL
STUDENT
AID**

**UNITED STATES DEPARTMENT OF EDUCATION
ADMINISTRATIVE HEARINGS BRANCH
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303**

Debtor Name
Debtor Address
City, ST Zip

RE: Request for Voluntary Repayment Plan
Account No.: S

This Department recently issued a decision on your objection to garnishment, in which the Department concluded that your objection on hardship grounds was partially proven, but that the evidence demonstrated your ability to pay a reduced amount. You indicated that you wished to avoid garnishment by entering into a voluntary repayment plan in order to avoid the garnishment.

The Department considers an acceptable repayment plan to include installment payments equal to the amount determined in the decision to be within your financial capability. You stated that you were not willing to repay that installment amount. We conclude that you do not intend to enter into a repayment agreement acceptable to the Department at this time. ED will proceed with the garnishment of your wages. ED will direct your employer to commence withholding.

The decision explained your rights with respect to seeking reconsideration and asserting financial hardship. You must make a request for hearing or reconsideration in writing, and send it to ED at the address listed below:

U.S. Department of Education
Attn: AWG Hearings Branch
61 Forsyth Street, Room 19T89
Atlanta, GA 30303

Any request you make for a hearing or reconsideration in the future will not delay this garnishment action; we will consider your objections and refund garnishment payments if needed.

You may request a hearing or reconsideration by using the Request for Hearing (RFH) Form you were sent with the notice of this action, or you may obtain a Request for Hearing and applications by contacting Customer Service at 1-800-621-3115, or you may go to ED's website at: <http://www.ed.gov/offices/OSFAP/DCS>, select Forms, then select the Request for Hearing Form and any application described for an objection raised in your Request for Hearing.

Your employer may not discharge you from employment, nor take disciplinary action against you, as a result, of an Order for Withholding; nor can a prospective employer refuse to employ you as a result of this proposed action or existence of an Order for Withholding. If any such actions for such reason are taken against you, you may sue that employer in a state or federal court for reinstatement, back pay, attorney's fees, and punitive damages.

Administrative Hearings Branch

PCA Cover Letter for Post Hearing Repayment Agreement

<PCA Letterhead>

This notice, regarding your account with the U.S. Department of Education, is from <PCA etc. >. The Department has placed your account with us for collection.

You have indicated that you wish to avoid garnishment of X% of your disposable pay by making a voluntary arrangement with the Department to repay your defaulted student loan(s) or grant obligation(s) described in the notice of garnishment recently sent to you. The balance of your obligation as of the date of this letter is noted above. The principal portion of that balance will continue to accrue interest. The Department will apply part of your payments to defray costs incurred to collect this obligation.

Enclosed is a proposed Repayment Agreement with the Department that the Department has asked us to send to you. The current garnishment process will be stopped, if, within 10 business days of the date of this letter, you take two steps:

1. If you sign and return that Agreement to the Department at <PCA address>, and
2. You send to installment payment amount shown on the enclosed Agreement, to the following address: <NPC Address>.

If both actions are not taken within this deadline, the garnishment process will continue.

Our business hours are: Monday-Thursday 8am-9pm, Friday 8am-5pm and Saturday 8am-12pm (CST). Our phone number is 1 888 XXX-XXXX.

This communication is from a debt collector attempting to collect a debt and any information obtained will be used for that purpose.

**** Please See the Reverse Side of This Letter for Important Information ****

Post Hearing Repayment Agreement with the U.S. Department of Education

Note: Read this entire agreement before signing. Retain a copy for your records. Return a signed copy to the address shown at the bottom of this Agreement.

I agree with the U.S. Department of Education that I will repay my obligation to the Department in monthly installments of **<MONTH-PAY>**.

My first payment in the amount of: **\$<MONTH-PAY>**. Is due **<DUE-DATE>**.

Each monthly payment after that is due by the **<DUE-DATE>** day of each month.

All payments must be forwarded to --

U.S. Department of Education
National Payment Center
P.O. Box 4169
Greenville, TX 75403-4169

I understand that this installment amount of **\$<MONTH-PAY>** applies for the next 6 months. After 6 months, I agree to provide current financial information if the Department requests it. My required installment payment may change based on that information. I agree to pay the installment amount as it may be adjusted by the Department. I agree that failure to provide financial information is a breach of this agreement.

I have objected to garnishment, and I have received a decision from the Department on my objections.

I agree that if I do not honor this agreement, the Department can start garnishing my pay at the rate of 15% of my disposable pay or the installment payment amount then in effect, whichever is less, without giving me further notice or any new opportunity for a hearing before that garnishment starts. I understand that if the Department starts garnishing my wages in the future, I can then request a hearing or reconsideration of my objection(s) to garnishment.

- I agree that I owe the amount stated in the decision on my objection(s) to garnishment.
- The Department will consider any request for hearing or reconsideration I make in the future, but it will not delay or suspend garnishment while it does so;
- I can then obtain a hearing on objections on grounds that --
 - garnishment would cause financial hardship to me and my dependents;
 - I have not breached this agreement;
 - I have not received credit for payments made on the agreement; and/or
 - I am protected by law from garnishment.
- I may also apply for discharge relief that may be available with respect to this debt.

Signature: _____ Date: _____

[Sign and return this agreement to the **[address indicated below]**. Keep a copy for your records.]

Return Signed Agreement to: U.S. Department of Education
C/O: PCA Address

Letter V42 Post Hearing VPY, but No \$\$ (Dollars), Extension – ED Letter Code: V42



**FEDERAL
STUDENT
AID**

**UNITED STATES DEPARTMENT OF EDUCATION
ADMINISTRATIVE HEARINGS BRANCH
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303**

Debtor Name
Debtor Address
City, ST Zip

RE: Request for Voluntary Repayment Plan
Account No.: S

This Department recently issued a decision on your objection to garnishment to collect debt(s) owed to the Department. In response, you stated that you wished to enter into a voluntary repayment plan in order to avoid the garnishment.

To avoid garnishment by a voluntary agreement to repay your debt, you must sign and return the repayment agreement sent to you, and make the first payment required under that agreement, within deadlines explained earlier to you. We have received the signed repayment agreement from you, but we have not received the first payment required under that agreement. If we do not receive that required payment within 7 business days of the date of this letter, ED will proceed with the garnishment of your wages at the rate specified in the decision.

Administrative Hearings Branch

Letter V43 Post Hearing \$\$ (Dollars) but NO VPY, Extension – ED Letter Code: **V43**



**FEDERAL
STUDENT
AID**

UNITED STATES DEPARTMENT OF EDUCATION
ADMINISTRATIVE HEARINGS BRANCH
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303

Debtor Name
Debtor Address
City, ST Zip

RE: Request for Voluntary Repayment Plan
Account No.: S

This Department recently issued a decision on your objection to garnishment to collect debt(s) owed to the Department. In response, you stated that you wished to enter into a voluntary repayment plan in order to avoid the garnishment.

To avoid garnishment by a voluntary agreement to repay your debt, you must sign and return the repayment agreement sent to you, and make the first payment required under that agreement, within deadlines explained earlier to you. We have received a payment from you, but we have not received a signed repayment agreement. If we do not receive your signed repayment agreement within 7 business days of the date of this letter, ED will proceed with the garnishment of your wages at the rate specified in the decision.

Administrative Hearing Branch



**FEDERAL
STUDENT
AID**

UNITED STATES DEPARTMENT OF EDUCATION
ADMINISTRATIVE HEARINGS BRANCH
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303

Debtor Name
Debtor Address
City, ST Zip

RE: Request for Voluntary Repayment Plan
Account No.: S

This Department recently issued a decision on your objection to garnishment to collect debt(s) owed to the Department. In response, you stated that you wished to enter into a voluntary repayment plan in order to avoid the garnishment.

To avoid garnishment by a voluntary agreement to repay your debt, you must sign and return the repayment agreement sent to you, and make the first payment required under that agreement, within deadlines explained earlier to you. You have not submitted both the signed repayment agreement and the first payment required under that agreement. ED will therefore proceed with the garnishment of your wages. ED will direct your employer to commence withholding.

The decision explained your rights with respect to seeking reconsideration and asserting financial hardship. You must make a request for hearing or reconsideration in writing, and send it to ED at the address listed below:

U.S. Department of Education
Attn: AWG Hearings Branch
61 Forsyth Street, Room 19T89
Atlanta, GA 30303

Any request you make for a hearing or reconsideration in the future will not delay this garnishment action; we will consider your objections and refund garnishment payments if needed.

You may request a hearing or reconsideration by using the Request for Hearing (RFH) Form you were sent with the notice of this action, or you may obtain a Request for Hearing and applications by contacting Customer Service at 1-800-621-3115, or you may go to ED's website at: <http://www.ed.gov/offices/OSFAP/DCS>, **select Forms, then select the Request for Hearing Form and any application described for an objection raised in your Request for Hearing.**

Your employer may not discharge you from employment, nor take disciplinary action against you, as a result, of an Order for Withholding; nor can a prospective employer refuse to employ you as a result of this proposed action or existence of an Order for Withholding. If any such actions for such reason are taken against you, you may sue that employer in a state or federal court for reinstatement, back pay, attorney's fees, and punitive damages.

What procedures must the PCA follow to establish a compromise agreement?

In the course of the garnishment process, the Department may agree to a compromise resolution of a debt. Compromise agreements can be lump-sum payment agreements. The Department may also authorize installment settlement agreements; currently, when the Department does so, it requires all installments to be completed within 90 days.

Compromise settlements for a single lump-sum payment need not address in detail the consequences of failure to make the payment, or to present a check later dishonored; enforcement action will simply continue, ordinarily for the full amount owed. On the other hand, the agreement must also notify the debtor, like settlement agreements outside AWG context, that the debtor is liable to repay the amount of any payment credited to the debt that is subsequently reversed (e.g., a TOP injured spouse claim).

A copy of a form notice of lump sum compromise is included here.

- If a debtor has agreed to a lump-sum settlement offer, and has also requested, but not yet received, a hearing, the PCA must obtain a written statement from the debtor withdrawing the request for hearing filed by the debtor.

Compromise settlements that involve payment in installments, like voluntary repayment agreements, must clearly explain the consequences of the agreement and any breach of the agreement. To do so, the Department has developed an installment payment compromise agreement form similar to the repayment agreement forms, including a transmittal letter (from the PCA) and an agreement (with the Department).

- The installment settlement agreement includes a provision in which the debtor agrees to withdraw the request for hearing if not already received.

For compromise agreements for payment in installments, follow the same procedures described in the preceding sections of this manual that apply to voluntary repayment agreements reached at the state of the hearing process at which the compromise agreement is reached. **However**, where the deadlines for repayment agreement procedures differ from the deadlines in the compromise settlement notices or agreements, use the deadlines set for the compromise.

AWG Lump-sum Payment Settlement Agreement

<PCA letterhead>

ACCOUNT NO.	PRINCIPAL BAL.	INTEREST
x	\$ x	\$ x
PENALTY CHARGE	FEES & COSTS	TOTAL BALANCE
\$ x	\$ x	\$ x

AWG Settlement Agreement

This notice regarding your account with the U.S. Department of Education is from <PCA>. The Department has placed your account with us for collection.

You notified us that you wish to avoid garnishment by making a voluntary payment to **settle** your defaulted student aid debt described in the notice of garnishment just sent to you. The total unpaid portion of the balance of this debt(s) is noted above. The principal portion of this debt(s) will continue to accrue interest.

The Department agrees to accept payment of \$XXX.00 in full satisfaction of its claim with respect the debt(s) listed in the Notice of Proposed Garnishment, if payment in that amount is received by [insert date] at :

**U.S. Department of Education
National Payment Center
P.O. Box 4169
Greenville, TX 75403-4169**

No other student aid debts are covered by this Agreement except those specifically listed on the Notice of Proposed Garnishment. By making payment in accordance with this agreement, you withdraw any request for hearing, and you release any claim against the Department for relief, with respect to this debt.

If full payment is not received by [insert mm/dd/yy], or if the payment check is dishonored, this agreement is void, and the Department will then enforce the full amount now owed, with accrued interest and collection costs. If you have requested and not yet received a hearing and decision, the Department will then provide a hearing. If any payment previously credited to this debt is reversed for any reason other than dishonor of the payment check, you will be responsible for repaying the amount of the reversal

Our business hours are: Monday-Thursday 8am-9pm, Friday 8am-5pm and Saturday 8am-12pm (CST). Our phone number is 1-800-XXX-XXX.

This communication is from a debt collector attempting to collect a debt and any information obtained will be used for that purpose.

**** Please See The Reverse Side Of This Letter For Important Information****

AWG Installment Payment Settlement Agreement

<PCA letterhead>

ACCOUNT NO.	PRINCIPAL BAL.	INTEREST
x	\$ x	\$ x
PENALTY CHARGE	FEES & COSTS	TOTAL BALANCE
\$ x	\$ x	\$ x

AWG Settlement Agreement

This notice regarding your account with the U.S. Department of Education is from [PCA]. The Department has placed your account with us for collection.

You notified us that you wish to avoid garnishment of **15%** of your disposable pay by making a voluntary arrangement to **settle** your defaulted student loan or grant obligation described in the notice of garnishment just sent to you. The unpaid portion of the balance of this obligation(s) is noted above. The principal portion of this balance will continue to accrue interest. The Department will apply part of your payments to defray costs incurred to collect this obligation.

Enclosed is a proposed Settlement Agreement with the Department that the Department has asked us to send to you. The current garnishment process will be stopped if, within [insert date] you complete the following two (2) steps:

1. You sign and return this Agreement to the Department at:

<PCA address>

2. You make the first payment listed on the enclosed Settlement Agreement.

Send all payments to the following address: **U.S. Department of Education
National Payment Center
P.O. Box 4169
Greenville, TX 75403-4169**

If both actions are not taken by your settlement deadline of [insert mm/dd/yy], the process will continue, including the provision of any hearing you may have requested, unless you have already received a hearing and decision, or have already agreed to withdraw that hearing request.

Our business hours are: Monday-Thursday 8am-9pm, Friday 8am-5pm and Saturday 8am-12pm (CST). Our phone number is 1-800-XXX-XXX.

This communication is from a debt collector attempting to collect a debt and any information obtained will be used for that purpose.

**** Please See The Reverse Side Of This Letter For Important Information****

Settlement Agreement

Note: Read this entire agreement before signing. Retain a copy for your records. Return a signed copy to the address shown on the letter that accompanies this Agreement.

I agree with the U.S. Department of Education that I will repay a total of \$ XXX.00 by [mm/dd/yy - insert date by which final payment must be made] to satisfy in full my obligation to the Department for the debts listed on the Notice of Proposed Wage Garnishment. The Department agrees to accept that amount, if paid according to the terms of this Agreement, as satisfying my obligation with respect to these debt(s) listed on the Notice of Proposed Garnishment recently sent to me by the Department. No other student aid debts are covered by this Agreement.

I will pay this amount in [two/three/four] installments of \$ XX.00

My first payment in the amount of \$ XX.00 is due mm/dd/yy.

[If three or more payments: Subsequent payments are due on the Nth of MM and MM]

My final payment is due by mm/dd/yy.

All payments are due as stated. There is no grace period for these payments.]

Each payment made under this Agreement must be forwarded to –

U.S. Department of Education
National Payment Center
P.O. Box 4169
Greenville, TX 75403-4169

I have been given an opportunity for a hearing to object to garnishment. Unless that hearing has already been provided, I now withdraw any request for a hearing that I have filed, and I release any claim I may have with respect to collection of this debt.

I agree that if I do not honor this agreement, the Department can start garnishing my pay at the rate of 15% of my disposable pay without giving me further notice or any new opportunity for a hearing before that garnishment starts. I understand that if the Department starts garnishing my wages in the future, I can then request a hearing or reconsideration of my objection(s) to garnishment.

- I agree that I owe the amount stated in the notice of garnishment or, if a decision on my objection(s) to garnishment has been issued, in the decision.
- The Department will consider any request for hearing or reconsideration I make in the future, but it will not delay or suspend garnishment while it does so;
- I can then obtain a hearing on objections on grounds that --
 - garnishment would cause financial hardship to me and my dependents;
 - I have not breached this agreement;
 - I have not received credit for payments made on the agreement; and/or
 - I am protected by law from garnishment.

I may also apply for discharge relief that may be available with respect to this debt.

Signature: _____ **Date:** _____
[Sign and return this agreement to <PCA address> Keep a copy for your records.]

What must the PCA know about the AWG Subsystem status codes?

AWG	Initial Status Code – Upon approval by an ED Official, the account is moved to WG1 and the First Official Notice is sent to the debtor	HR2	Subsystem Code - Accounts are placed here when the Debtor's objection to garnishment at 15% is sustained – the account is suspended for garnishment action only for 6 months
WG1	Subsystem Code Accounts are placed here to generate the First Notice to the debtor advising him of ED's intent to garnish wages, and their appeal rights.	HR3	Subsystem Code - Accounts are placed here when the Debtor is determined to have proven their claim of Partial Hardship – Reduce Garnishment Order Issued – this code is used when it is determined that the debtor can afford to pay a portion of the amount proposed, be it a <u>reduced amount</u> .
LEX	Subsystem Code - Accounts are placed here when it has been proven they are not subject to garnishment to due Legal Exclusion: Involuntary Separated from Previous Employment and Employed less than 12 months in current position.	OW1	Subsystem Code - Accounts are placed here when the First Order of Withholding sent to employer, directing them to withhold 15% of the debtors' disposable pay.
VPY	Subsystem Code - Accounts are placed here when the debtor has entered into a voluntary repayment arrangement with ED/its' representative to pay 15% of their disposable pay voluntarily. If the debtor fails to honor the agreement, 61 days later a Notice is automatically sent to employer ordering the garnishment at 15%.	OWR	Subsystem Code - Accounts are placed here when the Final Order of Withholding sent to employer, directing them to withhold a Reduce amount from the debtors' disposable pay.
HSF	Subsystem Code - Accounts are only placed here when the Debtor has submitted a timely request for hearing, claiming financial hardship <u>only</u>	OW2	Subsystem Code - Accounts are placed here when the Second Order of Withholding is sent to employer, directing them to withhold 15% of the debtors' disposable pay.
THR	Subsystem Code - Accounts are placed here when the debtor has raised objection(s) to the garnishment of his wages for reason other than Financial Hardship – the request for hearing must be postmarked or received (if not mailed) within 30 days of the Notice of Proposal to Garnish	NCE	Subsystem Code - Accounts are placed here when the employer is not in compliance with the order to garnish the debtors' wages.
SHR	Subsystem Code - Accounts are placed here when the Debtor Request for hearing is Schedule – this code is seldom used.	OWF	Subsystem Code - Accounts are placed here when the Final Order of Withholding is sent to employer, directing them to withhold 15% of the debtors' disposable pay or they will be held responsible.
HR1	Subsystem Code - Accounts are placed here when the Debtor's objection to garnishment at 15% is overruled – Debtor can afford to pay the full amount proposed to be garnish	SWG	Subsystem Code - Accounts are placed here when it is determined that the debtor's has been determined not to be subject to garnishment at this time.

GAR	Subsystem Code - Accounts are placed here when Garnishment remittances are being received	CWG	Subsystem Code - Accounts are placed here to Cancel Wage Garnishment and to re-start accounts placed in HR2
NLE	Subsystem Code - Accounts are placed here when the debtor is no longer employed	LPT	Subsystem Code - Accounts are placed here when payments from the Employer is Late or Missing
FOR	Subsystem Code - Accounts are placed here to Force a debt into the next status code or stop the garnishment order		

Notices of Intent to Garnish

Because of the numerous problems with the AWG Sub-System, it has become necessary to develop multiple Notices of Intent to Garnish. Currently **five (5)** Notices of Intent are available. The following explains when they are to be used (see Appendix). The differences among the **new Notices** lie in the language of two (2) new paragraphs in each notice; by changing these two (2) paragraphs, we avoid having to resend the same notice repeatedly every six months, and we more accurately identify exactly what is happening to the account.

T12 The basic DCIA notice: Sent to debtors to begin DCIA garnishment process; makes no reference to prior notices, prior requests for hearing, or outstanding garnishment orders issued under HEA.

T11 The “pipeline RFH notice:” This notice is sent to debtors who were sent a notice of proposed AWG under HEA (10%) authority, and asked for, but have not yet received, a hearing on their objections. This notice explains that we received their RFH, that we will provide the requested hearing, but that we intend to garnish at 15% , not 10%, and therefore, we give the debtor a whole new opportunity to object. The notice explains that if the debtor takes no action, we will conduct the hearing/review based on the objections and evidence raised on the HEA-garnishment RFH.

T08 The “move up to 15%” notice: This notice is sent to debtors for whom ED has already issued an HEA 10% garnishment order. The notice offers a new opportunity to object to AWG on any ground, including financial hardship. AWG continues at 10% until process completed. However, note that a debtor who received a hearing decision (at least one issued under DCIA authority) that ruled on various objections besides financial hardship cannot simply repeat, and obtain a new hearing on, objections already decided. Regardless of the form used to present old objections, those old objections, if identified as previously decided, will be treated as requests for reconsideration – not new objections.

T07 The “resume AWG after hardship suspension” notice: This notice is sent to debtors whom we had previously found to have proven full but temporary financial hardship, but that temporary determination is about to expire. This notice makes no reference to HEA 10% authority, and can be used for all debtors, regardless of the authority we rely on to garnish. The notice offers a new opportunity to object to AWG on any ground. However, note that a debtor who received a hearing decision (at least one issued under DCIA authority) that ruled on various objections besides financial hardship cannot simply repeat, and obtain a new hearing on, objections already decided. Regardless of the form used to present old objections, those old objections, if identified as previously decided, will be treated as requests for reconsideration – not new objections.

T09 The “resume AWG after partial hardship” notice: This notice is sent to debtors whom we had previously found to have proven partial but temporary financial hardship, but that temporary

determination is about to expire. This notice, like T08, makes no reference to HEA 10% authority, and can be used for all debtors, regardless of the authority we rely on to garnish. Garnishment at the old (reduced) rate continues while the new process is completed. The notice offers a full opportunity to object to AWG on all grounds. Again, however, note that a debtor who received a hearing decision (at least one issued under DCIA authority) that ruled on various objections besides financial hardship cannot simply repeat, and obtain a new hearing on, objections already decided. . Regardless of the form used to present old objections, those old objections, if identified as previously decided, will be treated as requests for reconsideration – not new objections.

What are the grounds for requesting a hearing?

Existence, amount, default status, or enforceability of the debt :

Balance Dispute – Objection on grounds that --

The debt was previously paid or settled in full

The amount due on the debt is incorrect because not all payments had been applied

The debt is not enforceable involuntarily because the debtor is currently repaying the debt under an acceptable repayment agreement

The debt was discharged or is currently in active bankruptcy

The loan is subject to cancellation due to death or permanent and total disability

The debt is unenforceable due to “**legal exclusion**”: Involuntarily separated from previous employment and employed less than 12 months current position

Objection on the grounds the loan should be discharged in whole or part due to:

Closed School Discharge

Teacher Cancellation

Ability to Benefit Discharge

Unpaid refund discharge

Unauthorized Signature or Forgery

Relief

Financial Hardship: this is the primary objection raised to garnishment: the claim that garnishment of fifteen (15) percent of the debtor’s disposable pay will create an undue financial hardship on the debtor and his or her dependents.

The Request for Hearing is included at Appendix B1, and can be sent to the debtor. The form is also available at <http://www.ed.gov/offices/OSFAP/DCS>, select Forms, then select “Administrative Wage Garnishment Request for Hearing.”

All RFHs must be submitted in writing to the following address:

**U.S. Department of Education
Atlanta Service Center
Attn: Hearings Branch
61 Forsyth Street, Suite 19T89
Atlanta, GA 30303
Fax: 404-562-6110
Telephone: 404-562-6012**

“Live” hearings – by teleconference or in-person – are available where testimony is required to resolve the issues in dispute. All in-person hearings are held at one of the three regional offices: **Atlanta**, **Chicago**, or **San Francisco**; the debtor must pay costs of attending and of any witnesses they produce.

Note: ED must provide a hearing within 60 days of receipt of the first request for hearing, even if untimely, or must stop garnishment until a decision has been rendered. ED does not otherwise stop a garnishment currently in effect unless the debtor demonstrates that the garnishment is causing a financial hardship upon the debtor and his or her family or the debt is not legally enforceable.

The debtor is responsible for providing documentation or evidence to substantiate any objection(s) **raised** in defense to the enforcement of the debt. The following is the information that should generally be requested from the debtor.

Who has the burden of proving facts at issue in a dispute regarding a garnishment?

Section 34.14 establishes who must prove the various facts that may be disputed in an objection to garnishment action:

§34.14 Burden of proof.

(a)(1) We have the burden of proving the existence and amount of a debt

(2) We meet this burden by including in the record and making available to the debtor on request records that show that—

(i) The debt exists in the amount stated in the garnishment notice; and

(ii) The debt is currently delinquent.

(b) If you dispute the existence or amount of the debt, you must prove by a preponderance of the credible evidence that—

(1) No debt exists,

(2) The amount we claim to be owed on the debt is incorrect, or

(3) You are not delinquent with respect to the debt.

(c)(1) If you object that the proposed garnishment rate would cause financial hardship, you bear the burden of proving by a preponderance of the credible evidence

that withholding the amount of wages proposed in the notice would leave you unable to meet the basic living expenses of you and your dependents.

(2) The standards for proving financial hardship are those in §34.24.

(1) If you object on the ground that applicable law bars us from collecting the debt by garnishment at this time, you bear the burden of proving the facts that would establish that claim.

(2) Examples of applicable law that may prevent collection by garnishment include the automatic stay in bankruptcy (11 U.S.C. 362(a)), and the preclusion of garnishment action against a debtor who was involuntarily separated from employment and has been re-employed for less than a continuous period of 12 months (31 U.S.C. 3720D(b)(6)).

(e) The fact that applicable law may limit the amount that an employer may withhold from your pay to less than the amount or rate we state in the garnishment order does not bar us from issuing the order.

(Authority: 31 U.S.C. 3720D)

How does a prior decision affect the hearing process?

If ED starts action to collect a specific **debt** (not “account”²) by AWG, prior AWG-related actions may affect the **current** hearing process: If ED made an AWG decision **under these DCIA regulations that includes a finding or ruling that a particular debt** was past-due, valid and enforceable in a particular amount, ED treats any future challenge to that finding as a **request for reconsideration**, no matter what the debtor calls the objection or what form the debtor uses to make that objection. **See below.**

- ED practice before the DCIA regulations was to decide the objection all over again each time it was made, from year to year, although we may have done so by adopting the reasoning of the prior decision. Or no attention was paid to whether there was any prior decision on the objection. This can waste time and resources.
- ED decisions under the DCIA rules notify the debtor that future challenges must be presented, and will be treated, as reconsideration requests.
- To ensure fairness, the reconsideration limitation applies only if the prior decision was issued under the DCIA rules and contained the explanation on the scope of future challenges being limited to reconsideration.

² ED collects **debts** by AWG. Challenges to the existence and amount of a **debt** require focus on the individual **debts** that comprise an account, not on the “account” – which may include several debts. acquired at different times.

How does a prior VPY affect the hearing process?

The issues and objections a debtor can raise and have considered in a hearing can be affected by agreements the debtor made in the past. Any agreement by the debtor must be reviewed carefully to determine whether and how an objection in a pending RFH gets considered. Debtor agreements can withdraw a pending RFH and can limit the scope of objection on a future RFH.

Agreements can withdraw a pending RFH: As in any other “due process” proceeding, a debtor who has filed an RFH can agree to withdraw that request. The PCA ordinarily attempts to negotiate a repayment agreement with any debtor who files a request for a hearing. Some VPYs now used, and new VPYs (Appendix G & H), provide that the debtor agrees that any request for hearing already filed is withdrawn.

- The Department recognizes that the debtor may have raised valid objections to the enforcement of the debt, and as part of some VPYs, the Department commits to consider those objections and to make any adjustment to the debt obligation warranted by those objections. That review process, however, is performed as a routine response to correspondence from an objecting debtor, and not conducted as an AWG hearing. Because the evaluation that may be conducted is not a hearing, and does not result in a hearing decision, in a future AWG proceeding the debtor might reassert in a new challenge to AWG the same objections that were actually raised or could have been raised in the RFH that was withdrawn as part of the VPY. The new VPY text (see Appendix 7A & 7B) limits repetition of objections to the amount of the debt.

Agreements can limit future appeal rights. The debtor may also agree to waive a future due process right, so long as the debtor understands the right and clearly waives that right. Thus, the debtor has a right to object to AWG and have a hearing that objection before AWG occurs, but the debtor can, as part of an agreement (here, the VPY) waive that right. The hearing official must therefore read the terms of any VPY with the debtor with regard to the particular debt at issue in an appeal.

- Both past VPYs used by ED and its PCAs and new VPYs have the debtor agree that if the VPY is breached, ED can garnish without further notice and without a new opportunity for a hearing prior to garnishment.
- In practice, when ED orders garnishment for breach of VPY, ED sends the debtor both notice that garnishment order is being issued, and a form RFH. ED **does not delay issuance of the AWG order**. Any RFH filed by the debtor is treated as an untimely RFH (thus, AWG must be suspended if decision not issued in 60 days).
- **Read carefully the text of the VPY:** VPYs used in the recent past do not clearly waive the debtor’s right to object to the existence or amount of the debt. These VPYs allow the debtor to reassert challenges to the debt, even challenges based on disputes that occurred years before the notice. but – as noted above – the objection will not delay issuance of the order.
- **Revised VPY text included at Appendix 7A and 7B** waives future objections to the amount of the debt owed at the time the VPY is signed. Hardship, loan discharge, and legal exclusion objections remain available.

Agreements can waive future objection to AWG rate. The debtor may also agree to a more limited appeal than would otherwise be available: some VPYs provide that if the debtor breaches the VPY, ED will garnish at the amount set in the VPY or 10/15%, whichever is less; other VPYs do not specify the rate.

- ED’s DCIA regulations provide that if the AWG order rate does not exceed the rate/amount set in a VPY within the previous 6 months. 34 CFR 34.7(b).
- Current system starts AWG at the full rate authorized by law (10/15%); therefore, under the rules, any debtor who agreed to a lesser rate can raise promptly object on financial hardship grounds no matter when the debtor signed the VPY.

- **Revised VPY text included at Appendix 7A and 7B** match the AWG rate used if breached with the repayment agreement rate: debtors agreeing to repay at 15% are subject to 15% AWG for breach; those paying less are subject to AWG at that lesser amount.

Agreements entered after hearing decisions If the debtor enters into a VPY after a hearing (one of the benefits of timely filing an RFH is this option), ED will probably have by then issued a decision. That issuance of a decision changes the scope of any future challenge to AWG if the debtor breaches the VPY and ED starts garnishment. At that point, the principles regarding prior hearing decisions (above) apply to any hearing process in connection with that future AWG.

What is reconsideration?

Reconsideration is the review and possible change to an existing AWG decision. The debtor can obtain judicial review of an AWG decision, but ED has no procedure for appeal of the Hearing Official's decision within the Department itself. However, the debtor can request ED to reconsider – and change -- that decision, or to consider new objection(s), or both. Note that ED has no form for requesting reconsideration. The debtor may use an RFH to present what is in fact a request for reconsideration. Whatever the form in which the objection is presented, you must determine whether the objection is in fact a Request for Reconsideration of a prior decision; if so, treat those objections within the Request under reconsideration rules (see below): (1) the debtor must submit evidence not previously submitted (whether the debtor had it earlier or not) **and** (2) that evidence must persuade us that the first decision should be changed.

- **Thus:** If the debtor **now** objects that the debt is not owed in the amount stated for reasons that happened in the past (e.g., parent paid the debt), and a prior AWG decision **ruled** that the debt was valid and owed in the amount stated, the **“new”** objection is really a request for reconsideration.
- In contrast, if the debtor's **“new”** objection is that the debt is not owed **because payments were made after the prior AWG decision**, that is a new objection, not a request for reconsideration.

Requests for reconsideration and subsequent AWG hearing requests whenever possible should be referred to the hearing official who issued the original decision with respect to that garnishment action.

§34.12 Request for reconsideration.

(a) If you have received a decision on an objection to garnishment you may file a request for reconsideration of that decision.

(b) We do not suspend garnishment merely because you have filed a request for reconsideration.

(c) We consider your request for reconsideration if we determine that—

(1) You base your request on grounds of financial hardship, and your financial circumstances, as shown by evidence submitted with the request, have materially changed since we issued the decision so that we should reduce the amount to be garnished under the order; or

(2)(i) You submitted with the request evidence that you did not previously submit; and

(ii) This evidence demonstrates that we should reconsider your objection to the existence, amount, or enforceability of the debt.

(d)(1) If **we agree to reconsider the decision**, we notify you.

(2)(i) We may reconsider based on the request and supporting evidence you have presented with the request; or

(ii) We may offer you an opportunity for a hearing to present evidence.

Authority: 31 U.S.C. 3720D

Does a request for reconsideration or a subsequent Request for Hearing affect issuance of a garnishment order?

The Department does not suspend or delay issuance of a garnishment order simply because the debtor has filed a request for reconsideration or a subsequent Request for Hearing on a debt. However, the debtor may seek “reconsideration” – or may file a new hearing request – for reasons that deserve immediate action: bankruptcy filing is one example. Staff should promptly give at least a cursory review to requests for reconsideration to determine whether immediate action is needed, or whether the request can be dealt with in due course. ED gives priority consideration to subsequent AWG hearing requests based on claims of current bankruptcy filing or bankruptcy discharge at any time, disability, or financial hardship based on unemployment

Can the debtor negotiate repayment terms after the first order has been issued?

If the debtor's Request for Hearing (RFH) is timely filed, he or she can still negotiate a voluntary agreement with the PCA or ED. However, if the RFH was untimely filed, the debtor cannot negotiate installment repayment terms, and withholding will be ordered at the amount determined strictly by the hearing official, and that amount will be withheld from his wages.

Can the debtor pay a compromise to resolve the debt once garnishment has been ordered?

Debtors can and quite often do negotiate lump sum payoffs of a debt after garnishment has started, however, ED does not stop garnishment until the debt has been settled (paid) in full. Any overpayments of the compromise amount resulting from a garnishment payment will be returned to the debtor.

Can the Hearing Official negotiate repayment options?

No. Hearing Officials do **not** negotiate repayment options, and do not offer terms in their decisions. The Hearing Official must maintain the appearance of total neutrality and objectivity. Debtors should be directed to contact the appropriate representative (PCA or Loan Servicing Branch) to negotiate repayment options.

What is a financial hardship?

Financial Hardship is the most common objection raised to garnishment at the rate of 15 percent of individual wages. Financial Hardship is defined as the inability to meet basic living expenses of the debtor and his or her dependents if 15% of the debtor's disposable pay (Gross Salary minus Taxes, Medicare, FICA, Medical Insurance), were to be withheld or used to pay the debt. 34 C.F.R. 34.3.

Based on the evidence of hardship presented, the Hearing Official may reject the claim, or may approve the claim in whole or in part, cancel or reduce the garnishment. PIC and the PCAs have the responsibility of gathering financial information from debtors needed to resolve these claims of Financial Hardship. The Hearing Official performs these steps for accounts not handled by PCAs.

What regulations govern financial hardship issues?

34.7 Consideration of objection to the rate or amount of withholding

(a) We consider objections to the rate or amount of withholding only if the objection rests on a claim that withholding at the proposed rate or amount would cause financial hardship to you and your dependents.

(b) We do not provide a hearing on an objection to the rate or amount of withholding if the rate or amount we propose to be withheld does not exceed the rate or amount agreed to under a repayment agreement reached within the preceding six months after a previous notice of proposed garnishment.

(c) We do not consider an objection to the rate or amount of withholding based on a claim that by virtue of 15 U.S.C. 1673, no amount of wages are available for withholding by the employer.

(Authority: 31 U.S.C. 3720D)

§34.18 Issuance of the wage garnishment order

(a)(1) If you fail to make a timely request for a hearing, we issue a garnishment order to your employer within 30 days after the deadline for timely requesting a hearing.

(2) If you make a timely request for a hearing, we issue a withholding order within 30 days after the hearing official issues a decision to proceed with garnishment.

(b)(1) The garnishment order we issue to your employer is signed by an official of the Department designated by the Secretary.

(2) The designated official's signature may be a computer-generated facsimile.

(c)(1) The garnishment order contains only the information we consider necessary for your employer to comply with the order and for us to ensure proper credit for payments received from your employer.

(2) The order includes your name, address, and social security number, as well as instructions for withholding and information as to where your employer must send the payments.

(d)(1) We keep a copy of a certificate of service indicating the date of mailing of the order.

(2) We may create and maintain the certificate of service as an electronic record.

(Authority: 31 U.S.C. 3720D)

§34.19 Amounts to be withheld under a garnishment order

(a)(1) After an employer receives a garnishment order we issue; the employer must deduct from all disposable pay of the debtor during each pay period the amount directed in the garnishment order unless this section or §34.20 requires a smaller amount to be withheld.

(2) The amount specified in the garnishment order does not apply if other law, including this section, requires the employer to withhold a smaller amount.

(b) The employer must comply with our garnishment order by withholding the lesser of—

(1) The amount directed in the garnishment order; or—

(2) The amount specified in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment); that is, the amount by which a debtor's disposable pay exceeds an amount equal to 30 times the minimum wage. (See 29 CFR 870.10.)

(Authority: 31 U.S.C. 3720D)

§34.20 Amount to be withheld under multiple garnishment orders

If a debtor's pay is subject to several garnishment orders, the employer must comply with our garnishment order as follows:

(a) Unless other Federal law requires a different priority, the employer must pay us the amount calculated under §34.19(b) before the employer complies with any later garnishment orders, except a family support withholding order.

(b) If an employer is withholding from a debtor's pay based on a garnishment order served on the employer before our order, or if a withholding order for family support is served on an employer at any time, the employer must comply with our garnishment order by withholding an amount that is the smaller of—

(1) The amount calculated under §34.19(b); or

(2) An amount equal to 25 percent of the debtor's disposable pay less the amount or amounts withheld under the garnishment order or orders with priority over our order.

(c)(1) If a debtor owes more than one debt arising from a program we administer, we may issue multiple garnishment orders.

(2) The total amount withheld from the debtor's pay for orders we issue under paragraph (c)(1) of this section does not exceed the amounts specified in the orders, the amount specified in §34.19(b)(2), or 15 percent of the debtor's disposable pay, whichever is smallest.

(d) An employer may withhold and pay an amount greater than that amount in paragraphs (b) and (c) of this section if the debtor gives the employer written consent.

(Authority: 31 U.S.C. 3720D)

§34.24 Claim of financial hardship by debtor subject to garnishment.

(a) You may object to a proposed garnishment on the ground that withholding the amount or at the rate stated in the notice of garnishment would cause financial hardship to you and your dependents. (See §34.7)

(b) You may, at any time, object that the amount or the rate of withholding which our order specifies your employer must withhold causes financial hardship.

(c)(1) We consider an objection to an outstanding garnishment order and provide you an opportunity for a hearing on your objection only after the order has been outstanding for at least six months.

(2) We may provide a hearing in extraordinary circumstances earlier than six months if you show in your request for review that your financial circumstances have substantially changed after the notice of proposed garnishment because of an event such as injury, divorce, or catastrophic illness.

(d)(1) You bear the burden of proving a claim of financial hardship by a preponderance of the credible evidence.

(2) You must prove by credible documentation—

(i) The amount of the costs incurred by you, your spouse, and any dependents, for basic living expenses; and

(ii) The income available from any source to meet those expenses.

(e)(1) We consider your claim of financial hardship by comparing:

(i) The amounts that you prove are being incurred for basic living expenses against.

(ii) The amounts spent for basic living expenses by families of the same size and similar income to yours.

(2) We regard the standards published by the Internal Revenue Service under 26 U.S.C. 7122(c)(2) (the

"National Standards") as establishing the average amounts spent for basic living expenses for families of the same size as, and with family incomes comparable to, your family.

(3) We accept as reasonable the amount that you prove you incur for a type of basic living expense to the extent that the amount does not exceed the amount spent for that expense by families of the same size and similar income according to the National Standards.

(4) If you claim for any basic living expense an amount that exceeds the amount in the National Standards, you must prove that the amount you claim is reasonable and necessary.

(Authority: 31 U.S.C. 3720D)

§34.25 Determination of financial hardship

(a)(1) If we conclude that garnishment at the amount or rate proposed in a notice would cause you financial hardship, we reduce the amount of the proposed garnishment to an amount that we determine will allow you to meet proven basic living expenses.

(2) If a garnishment order is already in effect, we notify your employer of any change in the amount the employer must withhold or the rate of withholding under the order.

(b) If we determine that financial hardship would result from garnishment based on a finding by a hearing official or under a repayment agreement we reached with you, this determination is effective for a period not longer than six months after the date of the finding or agreement.

(c)(1) After the effective period referred to in paragraph (b) of this section, we may require you to submit current information regarding your family income and living expenses.

(2) If we conclude from a review of that evidence that we should increase the rate of withholding or payment, we—

(i) Notify you; and

(ii) Provide you with an opportunity to contest the determination and obtain a hearing on the objection under the procedures in §34.24.

(Authority: 31 U.S.C. 3720D)

When and how can the debtor claim hardship?

The debtor can object on hardship grounds at any time. 34 CFR 34.24(a). However, whether ED gives the debtor a hearing on the objection depends on when the debtor raised the hardship claim and what the debtor shows in the request or objection:

- If the debtor entered a VPY within the past 6 months after a notice of garnishment, we do not consider objections on hardship grounds to garnishment at the rate or amount established in the VPY. 34 CFR 34.7(b).
- If the debtor has already received a hearing decision and then makes a request, based on financial hardship, for reconsideration of that decision to garnish, we may reconsider if the debtor shows by evidence presented with the reconsideration request that the debtor's financial circumstances have "materially changed since we issued the decision." 34 CFR 34.12(c)(1).
- Without regard to whether the debtor received a hearing or not,
 - If an AWG order is outstanding for 6 months or more, we must provide a hearing upon request. 34 CFR 34.24(c).
 - If an AWG order has been outstanding for less than 6 months, we provide a hearing only "in extraordinary circumstances" where the debtor shows that "injury, divorce, catastrophic illness" or similar events have occurred since the notice of garnishment and have caused "substantial change" in the debtor's financial circumstances. 34 CFR 34.24(c)(2).

In summary: the debtor who objects on hardship grounds to an outstanding order must show "materially changed" or "substantially changed" circumstances if the objection is raised within 6 months of the issuance of the order. After 6 months, we consider a hardship objection to an outstanding order without any special proof by the debtor. Last, the debtor cannot object on hardship grounds to a proposed AWG if he or she recently agreed to pay voluntarily after a threat of AWG, and we are – in effect – enforcing the VPY rate by AWG.

Who is included in the income and expense calculation? The regulations define hardship with respect to "the debtor and his or her spouse and dependents." 34 CFR 34.3. The regulations limit the costs taken into account to "costs incurred by the "you (the debtor), your spouse, and any dependents." 34 CFR 34.24(d)(2)(i). However, the income taken into account is "income available from any source to meet those expenses." 34 CFR 34.24(d)(2)(ii). Identifying the members of the household whose income and expenses count will be fairly straightforward in most instances, but in others, questions crop up: suppose the debtor is not married to the "life-partner" with whom the debtor lives? Suppose an individual who is not a spouse of debtor is a member of the household – is that person's income and expenses included in the computation? Does it matter whether the debtor claims that individual as a dependent? Must the person be married to the debtor to qualify as the "spouse" of the debtor?

Spouse: Although the regulations do not specifically provide, the individual claimed as the "spouse" of the debtor must be married to the debtor. This follows from the principle that hardship analysis is based on Internal Revenue Code standards, and the principles of Federal tax law guide their application. Thus, the status of the individual claimed as "spouse" should be clear on the tax return submitted by the debtor, which must identify whether the debtor is married or not.

Dependent: The household unit for cost purposes can properly include individuals who are dependents of either the debtor or the debtor's spouse, or both. The simplest way to identify those persons who qualify as dependents is to examine the tax returns submitted. Any individual identified as a dependent on either the debtor's return or the return of his or her spouse is a qualifying dependent. Attached as Appendix 15 is the Internal Revenue Code definition of "dependent."

Available income does not include that portion of the disposable pay that is not available to the debtor or dependents from their earnings by virtue of a garnishment order, or a voluntary agreement for important purposes: child support, alimony, or tax obligations. However, unlike "disposable pay" subject to garnishment – which is only the wages of the debtor – income available to meet expenses of the debtor's household includes any "income" available to meet the expenses claimed by the debtor – whether or not that income was

earned by the debtor, or by the debtor's "spouse" or a dependent of either. Thus, income from a "life-partner" or other adult who lives in the debtor's household, but is neither the spouse nor a dependent of the debtor, must logically be presumed to be available to some extent to meet the expenses of the household, which will typically be presented in the form of a single amount particularly for such large expense items as housing and utilities. The regulations do not state any standards for determining how much of the "other" household member's income should be considered "**available**" to meet the household expenses. This leaves at least two ways to determine that amount of income actually "available" for the expenses of the debtor, spouse and dependents where the household includes an adult who is neither the spouse of the debtor nor a dependent of the debtor or his or her spouse:

- Exclude both income of the "other" household member and the expenses claimed by the debtor to the extent that they pertain to the "other" household member. One way to do this is to count – for purposes of the comparison with the National Standards amounts – only the income and expenses of a family with the size and income of those individuals who qualify as the debtor and his or her spouse and their dependents.
- Include both the income of the "other" and all expenses of the household, including the other adult. This approach sounds contrary to the regulations, but can be justified as a reasonable way to meet the regulatory standard by presuming that the added income and added expenses offset each other.

What information is required to determine financial hardship?

If debtor claims that garnishment of 15 % of his or her disposable pay would create an extreme financial hardship for the debtor and his or her dependents:

Explain that the debtor **must** provide the Department with financial information justifying reduction in the amount to be withheld. The debtor may choose to use the Financial Disclosure Form enclosed with the Notice of Intent to Garnishment (S02), or can provide the information in another format of his or her own choosing. In whatever format chosen to submit the information to the Department, the debtor must submit the following data:

Income:

Two Current Leave and Earnings Statements / Two pay stubs for all members of their household with income, including wife, husband, children or other dependents, and frequency of income (Monthly, Bi-Monthly, Weekly, Bi-Weekly).

In addition: All other income: (Child Support, Welfare, Social Security, Rental Property Income, Stocks, Bonds, Etc.)

Examples of Basic Living Expenses for which documentation is required:

Rental/Mortgage Payment: (County, City, and State of Residences)

Utilities: (Gas, Electric, Phone, Water, Sewage)

Transportation: Auto, Auto Insurance, Monthly Fuel Cost, Mass Transit Expenses (Bus/Train)

Number of Autos

Number in Family (Living with you)

Amount Paid for Child Support

Child Care Expenses

Amount currently being garnished [not relevant to comparison with National Standards; treated as reduction to otherwise available disposable pay]

Medical Expenses (Monthly)

IRS Payments (Monthly)

Food (Monthly)

All documented garnishment orders, and documented formal agreements for the payment of Child Support, Alimony, and Taxes should be entered on the Income Side or Left Side of the AWG Calculator under the column marked "Other" as a deduction in the field labeled "Monthly Income Adjustment". This action recognizes that these funds are not available to the debtor to meet basic living expenses.

Note: Cable Bills, Credit Card Payments, Timeshares, and other costs are **not** included within the amounts for utilities or other personal costs under the National Standards. These and other specific costs need no special consideration unless the debtor claims the need for an amount for a particular category of expense that exceeds the amount under the National Standards, and points to special needs for his or her household for particular unusual costs, such as the cost for a particular item. The debtor would then need to show that that excess cost was “reasonable and necessary” for the debtor and his or her family.

Financial hardship and HHS National Poverty Guidelines

The purpose of Administrative Wage Garnishment is to recover funds due from debtors with a demonstrated or presumed ability to repay. It should never be used to or cause to occur an individual or his family being forced into poverty. Always remember the two primary goals of the Hearings Branch are to protect the Integrity of the AWG program and to ensure the Debtor's Right to Due Process.

National Poverty Standards: must be considered in rendering your decision. The calculator should reflect these individuals as having no ability to repay. However, as a hearing official you can use this information to determine ability to pay or whether or not to suspend an account at a glance. Listed below are the standards:

Source: Federal Register, Vol.67, No.31, February 14, 2002, PP. 6931-6933

Website: [HTTP://aspe.hhs.gov/poverty/02poverty.htm](http://aspe.hhs.gov/poverty/02poverty.htm)

2002 HHS Poverty Guidelines

Size of Family Unit	48 Contiguous States and D.C.	Alaska	Hawaii
1	\$8,860	\$11,080	\$10,200
2	11,940	14,930	13,740
3	15,020	18,780	17,280
4	18,100	22,630	20,820
5	21,180	26,480	24,360
6	24,260	30,330	27,900
7	27,340	34,180	31,440
8	30,420	38,030	34,980
For each additional person, add	3,080	3,850	3,540

The poverty guidelines are not defined for Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and Palau. In cases in which a Federal program using poverty guidelines serves any of those jurisdictions, the Federal Office, which administers the program, is responsible for deciding whether to use the contiguous-states and D.C. guidelines for those jurisdictions or to follow some other procedures.

How does the AWG hardship calculator operate?

This calculator consists of these worksheets (1) Definitions: explanation of what necessary expenses for Transportation, Housing & Miscellaneous (2) Instructions (3) Enter Data - all information is entered on this sheet. (4) AWG Calculator - which does the actual calculations (5) State - gathers information for all the other work sheets (6) the individual states plus DC - the first and second column consists of all populated places in that state in alphabetical order plus in which the counties those populated places are. (7) Useful sites & how to save (8) how to update this calculator (9) zip code list alpha by state then numerical within state

NOTE

Garnishment amount 10% - 15% can be changed at the top of the AWG calculator work sheet

INSTRUCTIONS FOR ENTER DATE WORKSHEET

*****Information can only be entered in the GREEN spaces*****

Row 2	DATE	Today's date automatically entered
Row 3	NAME	On calculator it will automatically be capitalized
Row 4	SSN	After you enter 9 digits it will automatically enter the dashes DO NOT enter the CITY if the borrower gave you the COUNTY. There may be several cities in the state with the same name but each county has a different name.
Row 5	CITY	The spelling must be the same as the spelling of the city in each State worksheet. Case does not matter. SPACES and PUNCTUATION do matter. If you are having problems check the State worksheet. Be particularly carefully of "Saint", "St", and "St."
Row 6	STATE	The two letter postal abbreviation of the state. This can be found on the State worksheet or the names of each of the States. If the borrower is not from the 50 states or DC enter PR (Puerto Rico) FC (foreign country) GU (Guam) VI (Virgin Islands) Regardless of what you enter the result is the same. Enter the county if known - IMPORTANT in certain states cities are counties - in some cases there is a city county and a county with the same name - e.g. Baltimore and Baltimore City in Maryland, St. Louis and St. Louis City in Missouri and several cities in Virginia (Bedford & Bedford City -- Fairfax & Fairfax City -- Franklin & Franklin City -- Richmond & Richmond City)
Row 7	COUNTY	
Row 8	# In family	Enter the number of people in borrower's family including borrower
Row 8	ALERT	Row 8 & 9 in blue - Special instructions for handling certain cities and counties
Row 9	# Of cars	Enter the number of cars in borrower's family (no matter how many you enter only 2 will count)
Row 10	ZIP	Enter the zip code of the borrower and it will give you the County and State in the spaces below. The zip code may be for more than on County but only the County in which most of the zip code is in will show.
Row 10	ERROR	If the calculator could not determine what county the borrower is in or if you did not enter the # in family or # of cars an error message shows. Check for spelling.
Row 11	COUNTY	The county obtained by entering the zip code (see Row 10)
Row 11	ERROR	If borrower lives in a place other then the 50 states or DC, the error message in Row 10 will appear. (See row 10)
Row 12	STATE	The State is obtained by entering the zip code (see Row 10)

Row 13	ALERT	This will list all the counties in which the city entered in Row 5 exists. Use the ZIP in row 10 to find the correct county.
Row 15	Prepared by	PIC/Collection agency name/ED
Row 18	SUM	Rows 18 & 19, 44 & 45 and 88 & 89 are calculators, which add up the figures you enter in the green spaces. The answer is given in the yellow space
Row 24	BORROWER INCOME	For the borrower, the calculator determines what is 10% of his/her disposable as well as what is that disposable pay. Enter how often the borrower is paid Enter the various amounts for the deductions listed in yellow. Do not enter Health insurance until the garnishment amount is 15% State mandated deductions can usually be determined by the fact that the state or state abbreviation is listed on the pay stub next the deduction. Some states require special insurance deductions. In the first green column a figure, even if "0", must be entered into each space. As you enter figures for each paycheck into each green column, the calculator figures what is the average deduction. For the spouse you are only figuring out what is the disposable income. Therefore, you can enter any deductions, including insurance, retirement, etc. in the green spaces. Enter name of other deductions in the green spaces below "Health Insurance" Otherwise it works the same as borrower income
Row 47	SPOUSE INCOME	
Row 69	OTHER INCOME	Unless someone else in the household is working, you enter any other income - alimony, child support, and welfare, in these spaces. You may have to combine. Monthly income adjustments such as prior garnishments, voluntary child support payments, alimony and overdue taxes are put in this column.
Row 82	MONTHLY INCOME ADJUSTMENT	Enter the amount the borrower is paying in garnishments, or voluntary paying for child support, past due taxes, or alimony Row 85 through 88 contains a calculator converting the amount a borrower is voluntary paying for child support, past due taxes or alimony from the period the borrower is voluntary paying this items to the period the borrower is being paid on their pay check.
Row 85	Conversion calculator	
Row 99	EXPENSES	Row 100 is Miscellaneous Expenses. See Definitions for what it include. The standard for the borrower is determined from income and number in family except for Alaska and Hawaii. Row 101 is Housing and Utilities. See Definitions for what it includes. The standard for the borrower is determined from county and number in family. Row 102 is Transportation. See Definitions for what it includes. The standard for the borrower is determined mostly by geographical region. A separate standard exists for certain major metropolitan areas. For borrowers who do not live in the 50 states and DC, there are no national standards. Do not enter the borrower expenses for these categories in Rows 100-102. Instead, enter them in regular expenses. All expenses listed in the same row are added up and the sum is entered in the calculator.
Row 107	Other Expenses	All other expenses borrower has. Enter deductions from borrowers pay stub here other then those listed in borrower's income. Transportation, Housing & Utilities and Miscellaneous Expenses for borrowers outside the 50 states and DC are entered here. Write the type of expense in the first green column. You may have to add several types of expenses together.

Row 109 Biweekly	This calculator on the side gives the monthly amount of an expense when you enter the biweekly amount. (Biweekly amount times 26 divided by 12)
Row 111 Weekly	This calculator on the side gives the monthly amount of an expense when you enter the weekly amount. (Weekly amount times 52 divided by 12)
Row 116 Average	This calculator on the side gives an average of the amount entered the boxes. Do not enter a zero.
Row 118 ERROR	You did not enter the borrower's gross pay, the State, or the # in family in Rows 6, 8 or 26.
Row 120 Other Expenses	Here you enter the amounts that you will accept of the expenses entered in Rows 108 - 115.

How to account for Non-ED garnishment orders and documented binding formal repayment agreement

All **Non- ED** garnishment orders; and documented binding formal repayment agreements for **Child Support**, **Alimony**, and **Past Due Taxes** should be entered on the *Income portion* (left side) of the calculator *under the income column marked “Other Income”* as a deduction in the field labeled “**Monthly Income Adjustment**”.

- For **Non-ED, pre-existing** garnishment orders **only**: Scroll down the column marked “**Other Income**” to the *section* designated for “**Monthly Income Adjustment**”. In this box, enter the “**per pay period**” amount of the garnishment for the **Debtor**.
- If the **amount** garnished per pay period **varies** with each pay period, **average the amount** and *enter the averaged amount per pay period*.

OTHER INCOME

Weekly (W), Biweekly (BW), Bimonthly (BM), Monthly (M)	
GROSS PAY	0.00
FEDERAL TAXES	0.00
STATE TAXES	0.00
LOCAL/CITY TAXES	0.00
FICA	0.00
MEDICARE	0.00
HEALTH/LIFE INSURANCE	0.00
	0.00
	0.00
	0.00
Monthly Income Adjustment**	0.00

- If you have multiple garnishments or garnishments plus legal repayment agreements, enter them in different fields on the same row. They will be automatically added up.
- For **documented binding formal repayment agreements** for child support, alimony, or taxes: You must obtain a legal copy of the agreement specifying the frequency and amount of the payment.

- If the frequency of the agreement amount differs from the borrower's pay cycle, the agreement amount **must be** converted to match the pay period frequency. To do this in the Financial Hardship Calculator, scroll down to the section just below, "**Other Income**".

Instructions for entering information for binding formal repayment agreements (only)

Step 1: In the first data field, enter the amount of the payment agreement.

Step 2: Enter the frequency of the borrower's agreement (M, W, BW, BM).

Step 3: Enter how often the borrower is paid (M, W, BW, BM).

Step 4: The results of entering this data will appear in the 4th box.
Enter this amount in the field marked "Monthly Income Adjustment"
in the column for "**Other Income**".

Enter amount borrower is paying		
Enter how often borrower is paying		M, W, BW, BM
Enter how often borrower is paid (pay-stubs)		M, W, BW, BM
Enter this amount	#N/A	

Note: two-2 new additional features have been added to the bottom left side of the calculator:

- 1) The first features automatically calculate the amount to be garnished per pay period at 10% or 15%.
- 2) The second features automatically calculates the percentage that the debtor is being garnished by **Non-ED** garnishments, this is only accurate when there are no non garnishment payments included in the monthly income adjustments.

Effect of outstanding garnishments and other legal obligations

Disposable pay is strictly defined to mean gross pay less withheld taxes, Social Security or comparable public pension withholding, and medical insurance premiums. Amounts being withheld for garnishment are not deducted in computing the 15% legally available. However, those amounts are not as a practical matter available, and amounts being repaid under voluntary agreements for taxes, child support and alimony are, as a matter of public policy, treated as not available – but only when computing hardship, not the 15% available by law.

Thus, the fact that the full 25% allowed by law to be withheld is already being garnished for other claims does not prevent ED from ordering garnishment. It simply means that ED will stand in line to have its order honored. That same debtor may prove financial hardship, but that depends on the family income of the debtor's household – not on whether his or her employer could immediately honor an ED order.

The financial ability of that debtor should be evaluated by deducting from the disposable income of each member of the household any amounts now being withheld or paid for a tax, child support or alimony agreement from any member's wages, to determine what income is actually available to the debtor and his or her dependents. The allowed living expenses are then deducted from the household's available income to determine whether an ED garnishment would cause hardship. A debtor with an employed spouse, therefore, may face no hardship from an ED garnishment even though the debtor's wages are subject to 25% garnishment from other creditors. In that case, ED finds no hardship and orders withholding, but puts the order into a special monitoring status to avoid unnecessary warnings to the employer about apparent noncompliance. On the other hand, if the amounts available net of garnishments and qualifying agreements is not sufficient to meet expenses, that debtor qualifies for a hardship ruling from ED, and is to be treated exactly as any other debtor found to have proven hardship.

Orders to be used for debtors currently being garnished in excess of 25%

PCA representatives should never inform debtors that ED cannot or will not issue a garnishment order simply because they are already subject to garnishment from existing garnishment order(s) that consume 25% of disposable pay. Effective immediately, the PCAs are to stop placing these accounts into NLE or SWG. The Department has designated AWG Status Code: (**SHR**) as the holding location for accounts with outstanding non-ED garnishment orders withholding the 25% allowed by law.

The existence of a Garnishment Order cannot be used as a defense against the issuance of a new order for garnishment. Therefore, if the debtor shows that existing garnishment orders affect the amount of his or her available income, but the debtor's household income is large enough that the debtor does not prove hardship, the hearing official places these accounts into AWG Status Code: (**SHR**) at the time a hearing decision is rendered and issues a *manual garnishment order* to the employer.

If – after ED has issued a system garnishment order - the PCA receives notification from the employer that the debtors' disposable pay is currently being garnished at the full 25% of disposable pay allowed by law, the PCA is to move the account to AWG Status Code: SWG, then to SHR. Upon placing the account in SHR, the PCA is to immediately notify the AWG Compliance Branch to issue a manual order to the employer to replace the system order.

The PCA may still solicit voluntary payments from the debtor; however, the account may **not** be removed from AWG Status Code: **SHR**, without prior approval from ED. Unless, the account is rehabilitated, settled in full, or paid in full by the debtor. Regardless, a manual stop wage garnishment (SWG) order must be issued to the employer to cancel the system order.

If the debtor raises this “defense” (25% currently being withheld) in response to a hearing decision, the representative receiving the call should clarify the following to the debtor:

- A) The fact that all available disposable pay is now being withheld for outstanding, non-ED Garnishment Orders is no defense to ED's issuance of a new order for garnishment.
- B) ED determined that your wages are subject to a garnishment order, as proposed in the notice, at the rate of <15 percent> or <\$\$> of your disposable pay.
- C) ED understands that your employer may not honor the ED order at this time. When outstanding prior orders are satisfied, your employer must honor the ED order. You will receive credit for these recoveries at that time.

How to evaluate financial information developed with hardship calculator

Evaluation of financial hardship claims – overview

The Hearing Official uses the information provided with the Hearing Request Form, Financial Disclosure Statement and developed by PCA/PIC to evaluate hardship claims independently of any conclusion reached by the PCA/PIC, in order to render a decision. The following table shows generally appropriate outcomes. **Each rests on the absence of any persuasive explanation showing that the debtor has expenses that exceed the national average amounts.** If the debtor submits explanatory statements showing particular need or justification, however, a different outcome may be proper.

CALCULATOR RESULT	OUTCOME
Calculator analysis shows that Debtor has ability to pay at Rate of 15%	Determine that debtor has not proven that garnishment at 15% rate would cause hardship at this time, except as otherwise provided in example A. If hearing request timely filed, debtor may still avoid garnishment by establishing Voluntary Repayment Terms (VPY) at 15%, or reasonable and affordable terms. If hearing request untimely debtor's wages will be garnished or continue to be garnished at the rate of 15%.
Calculator analysis shows that debtor lacks ability to pay at the rate of 15 % but can pay at a lesser rate.	Determine that the debtor will be subject to garnishment in the amount or rate that will not cause financial hardship, subject to re-evaluation of financial circumstances at six (6) month intervals. If hearing request timely filed, debtor may still avoid garnishment by establishing Voluntary Repayment Terms (VPY) at rate or amount determined to avoid Garnishment, and the account is placed into <u>HR3</u> <u>and the expected amount is entered on the L140 screen and the debtor manually billed.</u> If hearing request untimely debtor's wages will be garnished or continue to be garnished, but rate of withholding will be reduced rate as determined.
Calculator analysis shows that debtor lacks ability to pay at 15% or at a lesser rate.	Determine that the debtor will be not be subject to garnishment, subject to reevaluation of financial circumstances at six (6) month intervals.
Finally	If hearing request timely filed, no garnishment order will be issued. If garnishment order already issued, order will be cancelled. Debtor may still establish Voluntary Repayment Terms; However, the account is placed in <u>HR2</u> status and manually billed on the L103 Screen.

What is a balance dispute?

A balance dispute is any objection raised that challenges the validity of the amount of the liability on the debt to be recovered, for example: debt previously paid/settled in full, missing/misapplied credits, currently in repayment, unpaid refunds, funds never disbursed. The amount of liability includes charges for collection costs and interest. If the debtor disputes the amount shown due, the PCA takes the following steps.

Claims	How to Process
“Voluntary repayment agreement already reached with ED, its representatives, or collection agency”	The PCA should direct the debtor to contact the party with whom the arrangement was made to secure proof needed to: Verify account status Verify holder of account Verify type of loan/account Request a copy of the repayment agreement letter Notify all parties of current situation.
"Currently in Repayment"	<ol style="list-style-type: none"> 1) Check the L102 Notepad for possible VPY 2) Check your Agency Database for possible VPY 3) Check the R103 Screen for Regular Payments 4) Make 2 telephone attempts to home and work to reach debtor and ask to whom he/she is repaying. 5) Send or Request U64 Letter be sent requesting information. 6) If timely and wants to pay setup on VPY, and send repayment agreement letter. 7) Submit to AWG-HB if unable to obtain information on AWG-IMF: with above information, and indicate information not provided. 8) Submit on Cancellation Sheet if able to setup VPY.
"Missing Credit or Unapplied Credits"	<ol style="list-style-type: none"> 1) Contact debtor and request copies front and back of any missing payments and trace money orders. If debtor cannot supply, ask when and to whom they made the payment(s). Use the “Missing credits letter” included at end of this section. 2) Make at least 2 telephone attempts to reach before sending U64 letter requesting information. 3) Submit all the above information to AWG-HB on AWG-IMF. 4) If information not submitted in 29 days submit all the above information to AWG-HB on AWG-IMF, and indicate information not provided.
"Loan Previously Paid– In-Full Or Settled-In-Full" "Loan Previously Paid– In-Full Or Settled-In-Full"	<p>Contact debtor and request copies of front and back of any missing payments and trace money orders. Use the “Missing credits letter” included at the end of this section.</p> <p>Ask debtor when and to whom paid. (cont’d)</p> <p>Request copy of PIF or SIF Notice or Promissory Notes.</p> <p>Make at least 2 telephone attempts to reach debtor before sending U64 letter requesting information.</p> <p>Submit all the above information to AWG-HB on AWG-IMF.</p> <p>If information not submitted in 29 days submit all the above information to AWG-HB on AWG-IMF, and indicate information not provided.</p>

Claims of Employment for less than 12 months after involuntary termination

Claims to have been Employed Less Than 12 Months after involuntary termination	<p>Notify the debtor that the status claim must be substantiated. Use the “Employment status letter” included at the end of this section to explain the kind of proof needed.</p> <p>Call the employer and verify date employed. If less than 12 months call the previous employer and determine if terminated or resigned</p>
Claims to be currently Unemployed	<ul style="list-style-type: none">▪ Call the employer and verify date unemployed, and determine if terminated or resigned.▪ Request copy of termination notice▪ Request letter from Unemployment Office Verifying status.▪ If unable to reach by telephone send U69 Letter or letter requesting above information be confirmed.

How to handle employment duration information:

PCA Verifies that debtor is Unemployed	<p>Move into Status code NLE. Attempt to setup VPY. Stop AWG Submit cancellation notice to AWG–HB.</p>
PCA verified that debtor is employed Less Than 12 months After Involuntarily Separated	<p>Move into status code LEX Attempt to setup VPY. Stop AWG Submit to AWG-HB to Send Letter to borrower.</p>
PCA Verifies that information Submitted by debtor is False, Or Debtor Fails to Return Documentation.	<p>Submit to AWG-HB to Send letter to borrower.</p>

Claims of Third Party / Wrong person and Social Security Number disputes

Claims	Require Actions / Procedures
"Correct Social Security No. but Third Party / Wrong Person"	<ol style="list-style-type: none"> 1) Request copy of Driver's License 2) Birth Certificate 3) Social Security Card 4) Request Credit Bureau Check 5) Attempt to Contact by Phone to Obtain information. 6) Send or Request U63 Letter requesting above information. 7) Submit all the above information to ED on AWG-IMF. 8) If information not submitted in 29 days submit all the above information to AWG-HB on AWG-IMF, and indicate information not provided. 9) Order copy of file records from Raytheon.
"Incorrect Social Security No. and doesn't owe the debt"	<ol style="list-style-type: none"> 1) Request copy of Social Security Card 2) Request Credit Bureau Check 3) Order copy of File Records from Raytheon 4) Attempt to Contact by Phone to Obtain information. 5) Send or Request U63 Letter requesting above information. 6) Submit all the above information to AWG-HB on AWG-IMF. 7) If information not submitted in 29 days submit all the above information to AWG-HB on AWG-IMF, and indicate information not provided. 8) If Y11 letter has been sent, contact the employer to verify they have an employee with the same name and social security number.

Claims of Bankruptcy Protection or Discharge

The debtor may claim that the account should not be collected by garnishment because debt was discharged in bankruptcy or the debtor is currently protected from collection because of an active bankruptcy. These accounts are to be handled as Administrative Resolutions (ARC) if they are Dischargeable based on current CSB policies and guidelines. The PCA should explain the following to the debtor and request a copy of documents, **using the “Bankruptcy information letter” included after this section:**

Pending bankruptcy

If debtor provides credible evidence to support claim that bankruptcy has been filed and is now open, immediately notify ECMC following normal procedures, and suspend all collection action, including AWG.

Debt discharged in bankruptcy

A debtor who filed Bankruptcy after **October 7, 1998** may obtain discharge of his or her loan only by obtaining a judicial ruling that repayment would impose an undue hardship on the debtor and his or her dependents.

A debtor who filed Bankruptcy before **October 8, 1998**, must provide the Department with a copy of the following documents:

<u>Claims</u>	<u>Action Required</u>
Bankruptcy	1) Request copies of Bankruptcy documents or obtain the information from the court. 2) Determine the Dischargeability of the loan(s) using the Bankruptcy Calculator:
Dischargeable debt discharged in bankruptcy	Chapter 7 <u>and</u> 13: <u>Submit</u> ARC to CSB, <u>move</u> the account into AWG Status Code SWG and <u>submit</u> Hearing Cancellation Form to the AWG-HB.
Non-Dischargeable	A) If Chapter 7 <u>and</u> in automatic stay, <u>move</u> the account into THR if <u>timely</u> or SWG if <u>untimely</u> . <u>Submit</u> all information along with Bankruptcy Calculator to the AWG-HB to write a decision. B) If Chapter 7 <u>and</u> not in automatic stay, <u>submit</u> all information along with Bankruptcy Calculator to the AWG-HB to write a decision. C) If active <u>or</u> non-dischargeable Chapter 13 <u>move</u> account into THR or SWG, <u>send</u> to ECMC with a copy to CSB and <u>submit</u> Hearing Cancellation Form to AWG-HB. 3) <u>Due to nature of bankruptcy laws, it is strongly advised to use the letter or obtain the information from the courts to avoid the possibility of violating automatic stay or bankruptcy discharge order.</u>

Websites For Bankruptcy Calculators:

GSL (Stafford, SLS, PLUS) Bankruptcy Calculator –

http://www.collections.sfa.ed.gov/contractors/www/bankruptcy/gsl/gsl_index.htm

GSL Bankruptcy Discharge Calculation Results –

<http://www.collections.sfa.ed.gov/contractors/www/bankruptcy/gsl/gsl.asp>

NDSL Bankruptcy Calculator –

http://www.collections.sfa.ed.gov/contractors/www/bankruptcy/ndsl/ndsl_index.htm

NDSL Bankruptcy Discharge Calculation Results –

<http://www.collections.sfa.ed.gov/contractors/www/bankruptcy/ndsl/ndsl.asp>

FISL Bankruptcy Calculator –

http://www.collections.sfa.ed.gov/contractors/www/bankruptcy/fisl/fisl_index.htm

FISL Bankruptcy Discharge Calculation Results –

<http://www.collections.sfa.ed.gov/contractors/www/bankruptcy/fisl/fisl.asp>

PELL Grant Bankruptcy Calculator –

http://www.collections.sfa.ed.gov/contractors/www/bankruptcy/Pell/pell_index.htm

PELL Grant Bankruptcy Discharge Calculation Results –

<http://www.collections.sfa.ed.gov/contractors/www/bankruptcy/pell/pell.asp>

Disability claims

Borrowers may qualify for cancellation of a loan obligation on account of permanent total disability. If a borrower-debtor objects to the garnishment of wages on the basis that the debtor is temporarily¹ or permanently² disabled, the borrower's doctor must certify the condition and the extent of disability resulting from the condition.

The PCA should direct the borrower to submit a current medical evaluation from their Physician or Doctor. The PCA should send the borrower the U.S. Department of Education Form 1172 for Total And Permanent Disability Cancellation Request.

*The following information must be clearly indicated in any letter or on the form that is completed by your doctor:

The nature of the borrower's condition that is causing the Disability
The length of time the condition is expected to last.
That the borrower is restricted for medical reason from engaging in any type of employment activity and the borrower cannot return to school.
Doctor's Office Phone Numbers and Hours.
Doctor's License Number
Type of Doctor – Medical or Osteopathy
State License to Practice

Disability	<p>Make at least 2 attempts to contact the borrower by Phone to obtain the information required to send the disability package. Follow your normal procedures for obtaining this information.</p> <p>1) Once the information is obtained: If you determine the loan(s) meets CSB/ ED requirements for discharge, submit the ARC paperwork to CSB and send Hearings Cancellation Form to the AWG-HB.</p> <p>2) If you determine the loan does not meet ED/ CSB requirements for discharge, submit the paperwork to the AWG hearings Branch to notify the borrower and conclude the hearing.</p> <p>If information not submitted in 29 days submit all the above information to AWG-HB on AWG-IMF, and indicate information not provided</p>
-------------------	--

Death claims

A loan obligation may be canceled if the borrower, or in the case of a PLUS loan, the student for whose benefit the loan was obtained, died.

¹ The Department does not suspend or cancel defaulted student loans or grants on the bases of temporary disability.

² Totally and permanently disabled: the condition of an individual who is unable to work and earn money or attend school because of an injury or illness that is expected to continue indefinitely or result in death.

The borrower's family or personal representative may object that the borrower's wages should not be garnished due to the borrower's death. The Department will cease garnishment in this situation. The PCA will advise the borrower's family or representative to provide the Department with a certified copy of the borrower's death certificate and accept our condolences.

Death	<p>Make at least 2 attempts to contact the borrower Family by Phone to obtain the information required to close. Follow your normal procedures for obtaining this information.</p> <ol style="list-style-type: none"> 1) Once the information is obtained: If you determine the loan(s) meets CSB/ ED requirements for discharge, submit the ARC paperwork to CSB and send Hearings Cancellation Form to the AWG Hearings Branch. 2) If you determine the loan does not meet ED/CSB requirements for discharge, submit the paperwork to AWG-HB to notify the borrower and conclude the hearing. 3) Run a Credit Bureau Report At Least and Check with Social Security Administration, and County Records. <p>If information not received in 29 days submit all the above information to AWG-HB on AWG-IMF, and indicate information not provided</p>
--------------	---

Please forward copy of Death Certificate to:

**U.S. Department of Education
P.O. Box 4139
Greenville, TX 75403-4139**

Hearing request with NO specific objection stated

AWG Hearing Request	Action Required
Timely	<ol style="list-style-type: none">1) Make at least 2 attempts to reach debtor at work and home to discover objection, and request supporting documents.2) Order copy of File Records from Raytheon.3) Review your Notepads and ED's L102 Notepad to try to identify issue.4) Place account into Status Code: THR.5) If want to pay, setup on VPY, and cancel Hearing.6) If unable to reach or obtain documents, submit information obtained on AWG-HB IMF with copies of your screen Notepads and Attempts to contact borrower.7) Prepare "Denial of Requested Hearing – No Objection" letter.
Untimely	<ol style="list-style-type: none">1) Make at least 2 attempts to reach debtor at work and home to discover objection, and request supporting documents.2) Order file Records from Raytheon.3) If unable to reach, review your Notepad, and ED's for any unresolved issues.4) If want to pay, attempt to setup VPY at 10%, if cannot afford handle as hardship claim.5) If unable to reach or obtain documents, submit information obtained on AWG-HB IMF with copies of your screen Notepads and Attempts to contact borrower.6) Prepare "Denial of Requested Hearing – No Objection" letter.

Claims that the debt is not enforceable for other reasons

If debtor believes this debt is not enforceable, the PCA should advise the debtor to provide documentation to substantiate the position, and forward this information for review to the Department.

Claims of entitlement to loan discharge relief

Borrowers may object to garnishment on grounds that the loan is not enforceable against them because they qualify for discharge relief under HEA §437(c) on grounds that the school closed while they were in attendance, failed to pay them a refund to which they were entitled, falsely certified their eligibility to borrow, signed the application or promissory note for the borrower without permission, or without their authorization endorsed a loan disbursement check or electronic fund transfer authorization.

ED has designated the San Francisco Service Center as the office responsible for determining such claims. Generally any objection to garnishment based on claims for discharge relief will be referred to SFSC for a determination on the validity of the discharge claim. SFSC has developed the records, institutional memory, and expertise to evaluate these claims more effectively.

As a practical matter, this means that the AWG hearing process is generally suspended when a borrower objects on grounds of qualification for discharge relief until SFSC makes a determination on the validity of that claim.

As explained later in this manual, the PCA reviews the account for each borrower who requests a hearing. In those instances in which a borrower claims to qualify for discharge relief, attempts by the PCA to persuade the borrower to repay voluntarily may be counterproductive and fruitless if the discharge claim is later accepted. Therefore, unlike the handling of other hearing requests, in which the PCA will attempt to persuade the debtor to agree to repay voluntarily and forego the hearing, the PCA gathers information needed to resolve all objections raised by the borrower, but does not attempt to negotiate a repayment agreement with a borrower who claims discharge-type relief. ASC retains responsibility for review of the SFSC determination on a discharge-type relief claim, and PIC has no responsibility for that issue in its review of debtor objections.

If a borrower raises a claim for discharge relief in an AWG hearing request and has already received an adverse determination by SFSC or a guarantor on a discharge claim, that objection is considered in the hearing process in the same way as a newly-asserted claim that is denied by SFSC: ASC retains responsibility for review of that adverse determination, and in the AWG hearing decision, ASC determines whether to uphold, modify, or reverse the discharge determination, or to remand the discharge determination to SFSC for further consideration of particular legal or factual issues.

The procedures explained here for handling hearing requests in which a borrower asserts a claim to discharge relief apply only to those instances in which the borrower who has not already received an adverse determination by SFSC or by a guarantor. If a borrower who has already received an adverse determination from SFSC or a guarantor asserts a claim to discharge relief in opposition to garnishment, the hearing official considers that determination under the same review standard explained here, but that claim is not forwarded to SFSC for consideration.

These considerations also apply, with limited exceptions, only to handling discharge claims raised by borrowers who timely submit a completed application for that relief.³ Borrowers who do not timely pursue discharge relief within the AWG hearing process do not waive their right to do so later.

How to treat discharge claims based on closed school, false certification, or unpaid refund?

The PCA attempts to secure information from borrowers who claim a right to discharge relief. To determine whether the borrower qualifies for relief, the Hearing official sends the borrower the appropriate applications for discharge relief.

Although the HEA creates a right to **discharge** only for loans made after 1985, other loans may qualify for **more limited relief** on these same grounds, under longstanding ED policy. ED treats claims that schools failed to pay refunds, closed without providing full training, or forged borrower endorsements on loan documents as **partial defenses to repayment of GSL/FFEL loans**:

Closed school: Borrower who establish that a school closed while they were in attendance qualify for prorated reduction of their loan balance corresponding to the fraction of the loan period not completed because of the school's closure (Note that the 90-day pre-closure withdrawal option does applies only to post-1985 loans.)

Unpaid refund: Borrower who establish that the school owed, but failed to pay, a required refund, qualify for reduction of the loan balance equal to the unpaid refund with interest, as if the refund had been timely made and properly credited to reduce the loan balance.

Forgery or unauthorized endorsement: Borrower who establish that the school forged their endorsement on a disbursement check, or negotiated the check without the borrower's endorsement, are not liable for the

³ No application will be required if ASC knows that the borrower falls within a group or category of individuals for whom ED has already determined that relief will be made available without the need for an application.

amount of the disbursement unless the amount of the disbursement was credited against an outstanding tuition obligation owed to the school.

Forgery or unauthorized execution loan application or promissory note: borrowers who establish that they did not execute or authorize another to execute a promissory note, or a combined application/promissory note are not considered liable for the amount disbursed on the loan.

Only post-1985 FFEL/GSL and Direct loans, as required by the statute itself, can qualify for discharge relief on account of False Certification/ATB. The Applications for discharge relief require the information needed to determine the validity of these discharge-type claims for pre-1986 loans. Therefore it is useful to ask a borrower who objects to garnishment by claiming relief for a pre-1986 loan on the basis of a school closure, unpaid refund, or unauthorized signature, to complete the appropriate discharge application.

Claims	Loans Eligible	Required Action
Closed School	Perkins, NDSL, FISL, GSL and Direct Loans Disbursed on or after 1/1/1986; older loans prorated based on % of loan period completed at closure	Send Closed School Discharge Application to borrower with AWG Cover Letter. The discharge applications are available on the CSB Web Site.
Ability to Benefit No GED/ High School Diploma Disqualifying Status	Direct Loans, FISL, and GSL Disbursed on / after 1/1/1986	Send appropriate ATB Discharge Application to borrower with AWG Cover Letter. The discharge applications are available on the CSB Web Site. There are separate forms for No GED/HSD and disqualifying status
Unauthorized Signature	Direct Loans, FISL, and GSL Disbursed on / after 1/1/1986. All Loans received prior to this date should also be sent the Unauthorized Signature application. They are treated as forgeries and handled by AWG-HB.	Send Unauthorized Signature Discharge Application to borrower with AWG Cover Letter. The discharge applications are available on the CSB Web Site.
Unpaid Refund	All loans	Send Unpaid Refund Discharge Application

If loan was disbursed prior to January 1, 1986, or the Loan was a National Defense/Direct Student Loan (NDSL), the borrower is not eligible for a closed school or refund **discharge**, but may qualify, as explained on the Discharge Relief chart, for pro-rated debt relief. The debtor should complete the Closed School or Unpaid Refund Loan Discharge application, because the information needed to consider the claim can be obtained by using the form, even though the relief is not technically “discharge relief.”

Claims for Teacher Cancellation

Request for Teacher Cancellation	What to Do
<u>Perkins & NDSL Loans Only.</u>	<ol style="list-style-type: none"> 1) Make 2 attempts to contact borrower at home or work and advise borrower to go to any College / University Financial Aid office in their area to obtain the Cancellation Forms to have completed by the Schools / School Board where they taught for the 1st five years. 2) These forms are also locate on the CSB Web Site and can be downloaded and mailed to the borrower to complete and return.

	3) Once information is obtained, submit all information to AWG-HB to Respond. 4) Place the account into Status Code THR if timely request.
--	--

Transmitting Privacy-Act protected data by internet email

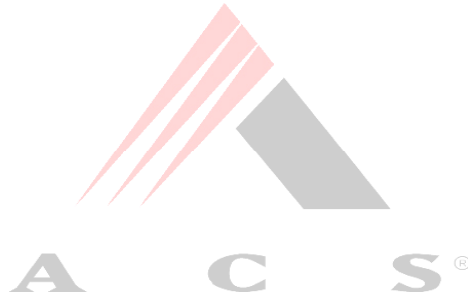
The Privacy Act requires Federal agencies to take appropriate steps to insure the security and confidentiality of agency records, and to protect against anticipated threats to their security which could result in embarrassment, harm, or inconvenience to the individual. Personal information contained in Department records regarding debtors, including information in ED records obtained by the contractor or required to be maintained and transmitted to the Department, is protected by the Privacy Act. The Department has not established formal standards regarding transmission of such information over internet email, but to avoid challenges by individuals that the Department does not sufficiently protect such data, any transmission over internet email of information regarding debtors that includes the debtor's Social Security Number, financial history, or other personal information should be done by placing that information in a password-protected Word document attached to the email message. Obviously, the password needed to open the attachment must never be included in the same email message.

To password-protect a Word document:

1. Open the document.
2. On the **File** menu, click **Save As**.
3. On the **Tools** menu in the **Save As** dialog box, click **General Options**.
4. In the **Password to open** box, type a [password](#), and then click **OK**.
5. In the **Reenter password to open** box, type the password again, and then click **OK**.
6. Click **Save**.

Requests for documentation

Request Documents	What to Do
Borrower requests copies of loan file or loan records	Order File Records from Raytheon Print Copy of your Account Note Pad. Forward all records to the AWG Hearings Branch to respond to Borrower.



**COMMON SERVICES
FOR BORROWERS**
*"We Help America Manage
Student Aid Obligations"*

CSB Common Retrieval

DRAFT

System Logon

Sign into your terminal. On your desktop, double click on CSB Common Retrieval Icon.

Microsoft Internet Explorer

When signing into the CSB Common Retrieval System the Microsoft Internet Explorer box will ask. “Do you want to close this window?”

Click on ‘yes’ every time you logon.



Logon Window

The Logon window prompts you to enter your **User ID** and **Password**.

Your User ID connects you to every document that you work.

Logon – The ‘Logon’ button will verify your User ID and Password for the application.

Clear – The ‘Clear’ button will clear the text boxes in the window.

Click the Logon button after entering your User ID and Password.

Click to change Password – The “Click to change password” button will allow you to update your password when necessary.

Please note: You may choose to change your password at any time for any reason. Otherwise, the system will prompt you to change it every 90 days.

CSB Common Retrieval

The CSB Common Retrieval window allows you to perform searches for a specific document or group of documents.

Document Class – The Document Class Selection Control selects the document class. This drop-down list box is initially populated with all the document classes.

Search Fields – The Search Fields include all index fields for the specified document class. You must enter one or multiple fields that will be the criteria for the search function

Enter at least one of the following:

SSN – the borrowers Social Security Number.

Debt ID – a Debt ID (a list will be provided).

The screenshot shows the 'CSB Common Retrieval' web form. At the top left is the FSA logo with the text 'We Help Put America Through School'. At the top right is the text 'COMMON SERVICES FOR BORROWERS' and 'The Help America Manage Student Aid Obligations'. Below the header is a blue bar with four buttons: 'Search', 'Clear', 'Submit', and 'Close'. The main form area has a title 'PCA ID: JYB'. Below this is a 'Document Class' dropdown menu set to 'All'. A link 'Click here to get Microfilm, Microfiche or Paper Documents:' is followed by a checkbox. The section 'Please Enter At Least One (1) Key Value:' contains input fields for 'SSN' and 'Debt ID'. Below this is the section 'Optional fields for Microfilm, Microfiche or Paper:', which includes a 'Document Required' dropdown (set to 'F-Entire File'), a 'Request Type' dropdown (set to 'C-Copies'), and a 'Debt Type' dropdown (set to 'A-ALL'). At the bottom of this section are input fields for 'Send To', 'Street Addr1', 'Street Addr2', 'City', 'State', and 'ZIP'.

Search – The ‘Search’ button performs a search for the specified criteria that you input.

Clear – The ‘Clear’ button will clear the search fields in the window.

Submit – The Submit Button can only be selected once you have performed your search. Submit will sent your request and the document will be sent to you shortly.

Close – The ‘Close’ button closes the current window.

The following fields are OPTIONAL when requesting Microfilm, Microfiche, or Paper documents:

Document Required –
Select the Document
required via a drop-down
list. **F= Entire File and P=**
Prom Notes Only

Request Type – Select the
Request type via a drop
down list.

C = Copies and
O = Originals.

ONLY FSA can request
originals.

Debt Type –
Select the
Debt Type via
a drop down list.

A = All
D = FDSL
G = GSL

F = FISL
N = ND SL
P = POVR

This next section can only be completed by FSA and PIC. **ONLY FSA and PIC can make Third Party requests.**

Send To – enter the pre-determined third party for this request.

Street Addr1 *

Street Addr2 *

City *

Sate *

Zip*

*Enter the pre-determined Street Address, City, State and Zip for this request.

Note: Third Party Requests cannot be mailed to a PO Box address, must be mailed to a street address.

Submit will sent your request to the pre-determined third party.

Search by DEBT ID

Debt Id - enter the Debt Id (There will be a validation routine that will go against DCMS mainframe to see if the PCA is requesting documents that are assigned to them.

Accounts that are not authorized for your viewing will be restricted.

Select **Search**.

CSB Common Retrieval

COMMON SERVICES FOR BORROWERS
"We Help America Manage Student Aid Obligations"

Search Clear Submit Close

PCA ID: JYB

Document Class: All

Click here to get Microfilm, Microfiche or Paper Documents: ☐

Please Enter At Least One (1) Key Value:

SSN

Debt ID: G199305071297201

Optional fields for Microfilm, Microfiche or Paper:

Document Required: F - Entire File

Request Type: C - Copies

Debt Type: A - ALL

Send To

Street Addr1

Street Addr2

City


State

ZIP

Debt ID

Results of DEBT ID Search

Click on a **DOC ID** number to retrieve the document

**CSB Common Retrieval**

COMMON SERVICES
FOR BORROWERS
*"We Help America Manage
Student Aid Obligations"*

SearchClearSubmitClose

PCA ID: JYB

Document Class:

Click here to get Microfilm, Microfiche or Paper Documents: ☐

Please Enter At Least One (1) Key Value:

SSN

Debt ID

Optional fields for Microfilm, Microfiche or Paper:

Document Required

Request Type

Debt Type

Send To

Street Addr1

Street Addr2

City

State

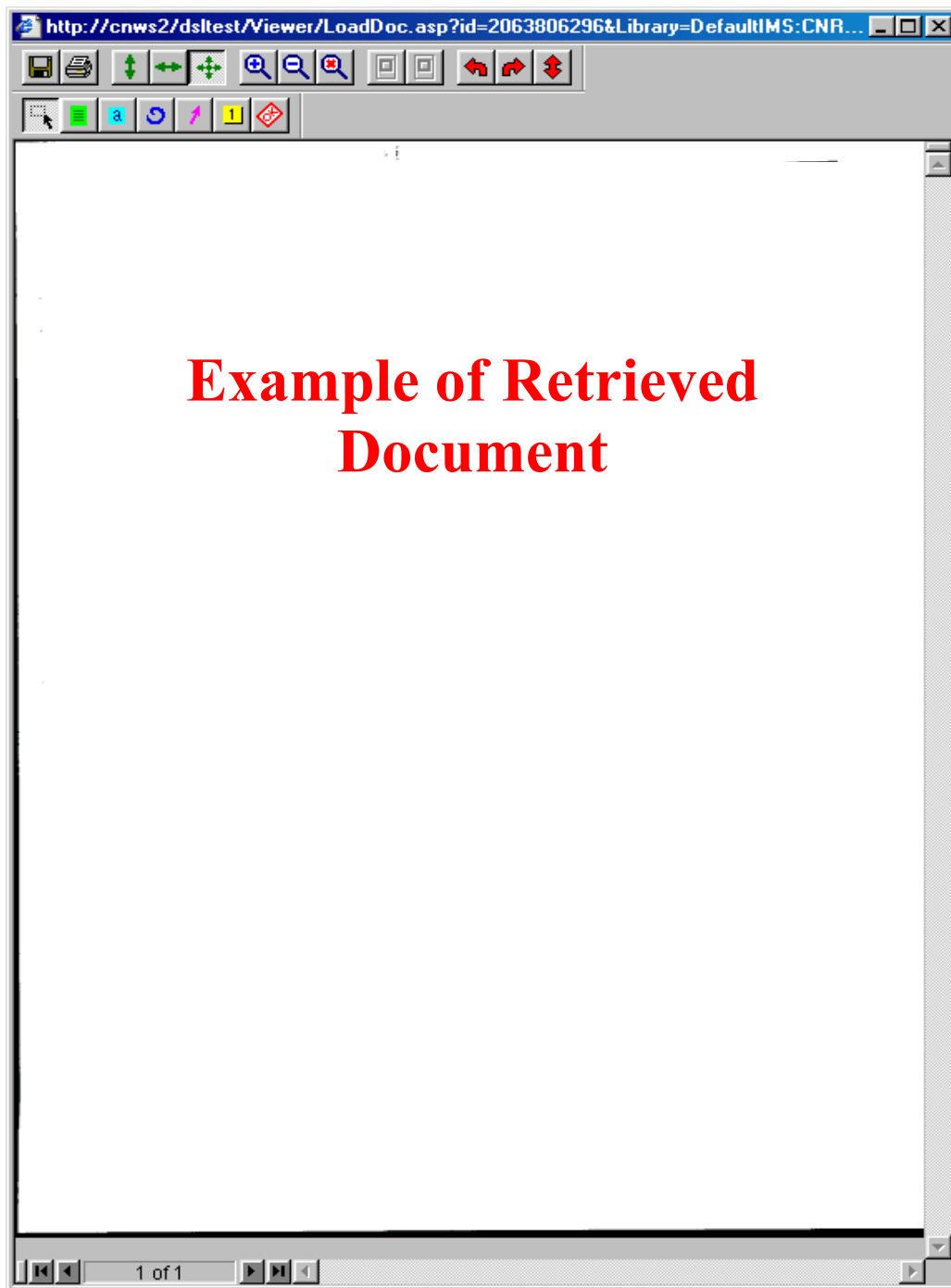
ZIP

2 Item(s) Found

Doc ID	SSN	Doc Type	Debt ID	Receipt Date	Company ID	Case ID	image_id	Auxiliary 1	Auxiliary 2	Date Of Death	Spouse SSN
244930	559668907	tlfn		9/20/2004							
244929	559668907	tlfn		9/20/2004							

Document Viewer

The **Document Viewer** window displays the document image.

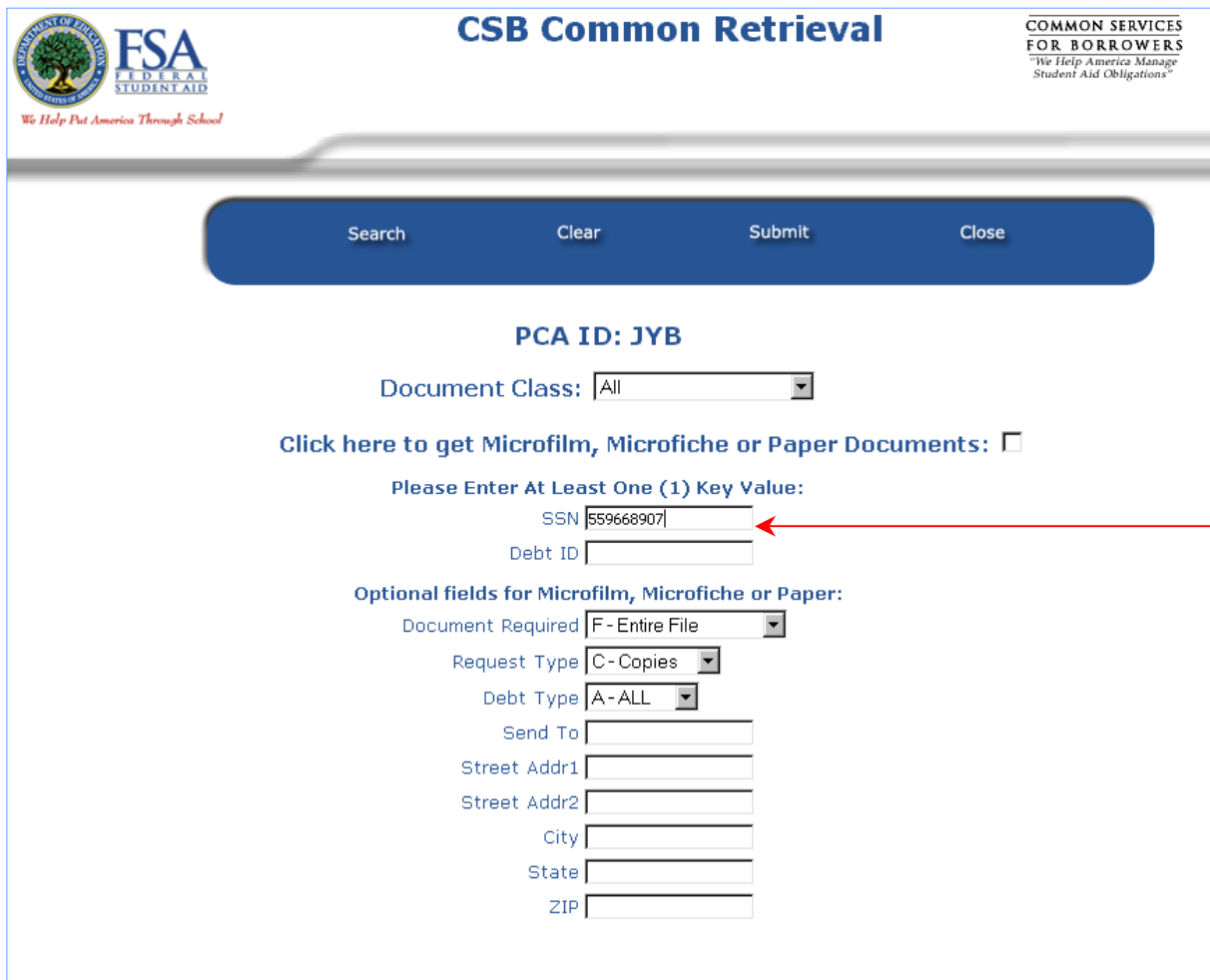


Search by SSN

SSN - Enter the borrower's Social Security Number.

Accounts that are not authorized for your viewing will be restricted.

Select **Search**.



CSB Common Retrieval

COMMON SERVICES
FOR BORROWERS
"We Help America Manage
Student Aid Obligations"

Search Clear Submit Close

PCA ID: JYB

Document Class: All

Click here to get Microfilm, Microfiche or Paper Documents: ☐

Please Enter At Least One (1) Key Value:

SSN 559668907

Debt ID

Optional fields for Microfilm, Microfiche or Paper:

Document Required F - Entire File

Request Type C - Copies

Debt Type A - ALL

Send To

Street Addr1

Street Addr2

City



State

ZIP

SSN

Results of SSN Search

Click on a **DOC ID** Number to retrieve the document

**CSB Common Retrieval**

SearchClearSubmitClose

PCA ID: JYB

Document Class:

Click here to get Microfilm, Microfiche or Paper Documents: ☐

Please Enter At Least One (1) Key Value:

SSN

Debt ID

Optional fields for Microfilm, Microfiche or Paper:

Document Required

Request Type

Debt Type

Send To

Street Addr1

Street Addr2

City

State

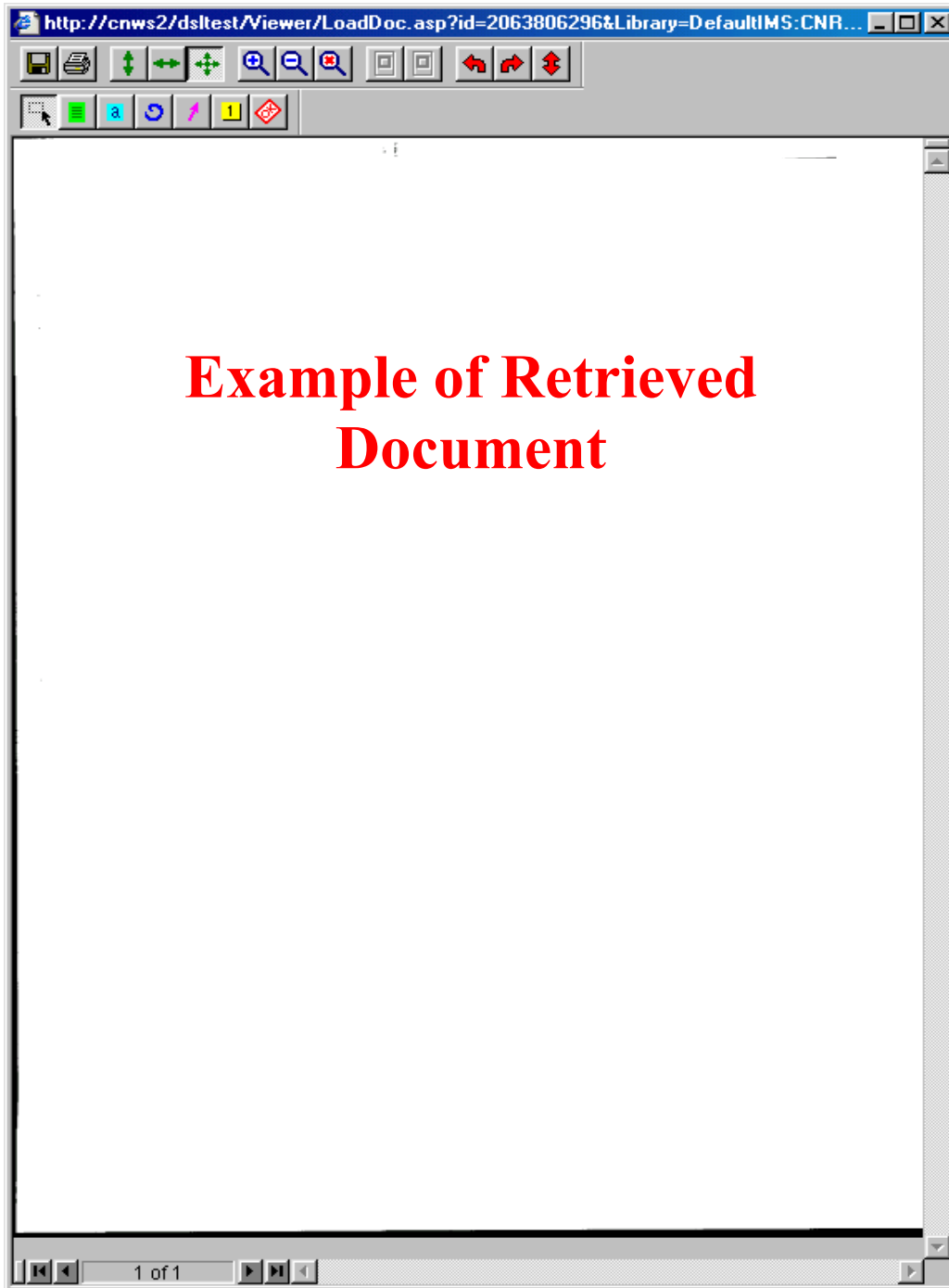
ZIP

2 Item(s) Found

Doc ID	SSN	Doc Type	Debt ID	Receipt Date	Company ID	Case ID	image_id	Auxiliary 1	Auxiliary 2	Date Of Death	Spouse SSN
244930	559668907	tlfn		9/20/2004							
244929	559668907	tlfn		9/20/2004							

Document Viewer

The **Document Viewer** window displays the document image.



Search for MICROFILM, MICROFICHE OR PAPER DOCUMENTS

Click on the box to request **Microfilm, Microfiche or Paper Documents**

Debt Id - enter the Debt Id (There will be a validation routine that will go against DCMS mainframe to see if the PCA is requesting documents that are assigned to them.


Accounts that are not authorized for your viewing will be restricted.

Select **Search**.

The screenshot shows the 'CSB Common Retrieval' web interface. At the top left is the FSA Federal Student Aid logo with the tagline 'We Help Put America Through School'. At the top right is the text 'COMMON SERVICES FOR BORROWERS' and 'We Help America Manage Student Aid Obligations'. Below the header is a blue bar with buttons: Search, Clear, Submit, and Close. The main form area has a title 'PCA ID: JYB'. Below this is a 'Document Class' dropdown menu set to 'All'. A checkbox labeled 'Click here to get Microfilm, Microfiche or Paper Documents:' is checked. To the right of this checkbox is a red arrow pointing from a red box containing the text 'Microfilm, Microfiche or Paper Documents'. Below the checkbox is a section titled 'Please Enter At Least One (1) Key Value:' with a red bracket on the right. It contains two input fields: 'SSN' with the value '249989961' and 'Debt ID' with the value 'G199305027258301'. To the right of these fields is a red box containing the text 'Enter either the SSN OR Debt ID'. Below this is a section titled 'Optional fields for Microfilm, Microfiche or Paper:'. It contains several dropdown menus and text input fields: 'Document Required' (set to 'F - Entire File'), 'Request Type' (set to 'C - Copies'), 'Debt Type' (set to 'A - ALL'), 'Send To', 'Street Addr1', 'Street Addr2', 'City', 'State', and 'ZIP'.

Results of MICROFILM, MICROFICHE, OR PAPER DOCUMENTS Search

You can request the items listed by clicking the Submit button. They are not viewable on this web site. Your request will be passed to the Debt Collection System and the document will be sent to you shortly. You can click on the checkboxes to select debts; otherwise, the request will be submitted for every debt displayed.



FSA
FEDERAL
STUDENT AID

We Help Put America Through School

CSB Common Retrieval

**COMMON SERVICES
FOR BORROWERS**
*"We Help America Manage
Student Aid Obligations"*

Search
Clear
Submit
Close

PCA ID: JYB

Document Class: All

Click here to get Microfilm, Microfiche or Paper Documents: ☒

Please Enter At Least One (1) Key Value:

SSN

Debt ID G199305027258301

Optional fields for Microfilm, Microfiche or Paper:

Document Required F - Entire File

Request Type C - Copies

Debt Type A - ALL

Send To

Street Addr1

Street Addr2

City

State

ZIP



You can request the items listed below by clicking the Submit button. They are not viewable on this web site.
Your request will be passed to the Debt Collection System and the documents will be sent to you shortly.
You can click on the checkboxes to select debts, otherwise the request will be submitted for every debt displayed.

1 Item(s) Found

Get	Debt ID / SSN	FirstName	LastName
<input type="checkbox"/>	G199305027258301	SHELIA	DORMAN

Results of SUBMIT

Request successful.

**CSB Common Retrieval**

SearchClearSubmitClose

PCA ID: JYB

Document Class:

Click here to get Microfilm, Microfiche or Paper Documents: ☒

Please Enter At Least One (1) Key Value:

SSN

Debt ID

Optional fields for Microfilm, Microfiche or Paper:

Document Required

Request Type

Debt Type

Send To

Street Addr1

Street Addr2

City

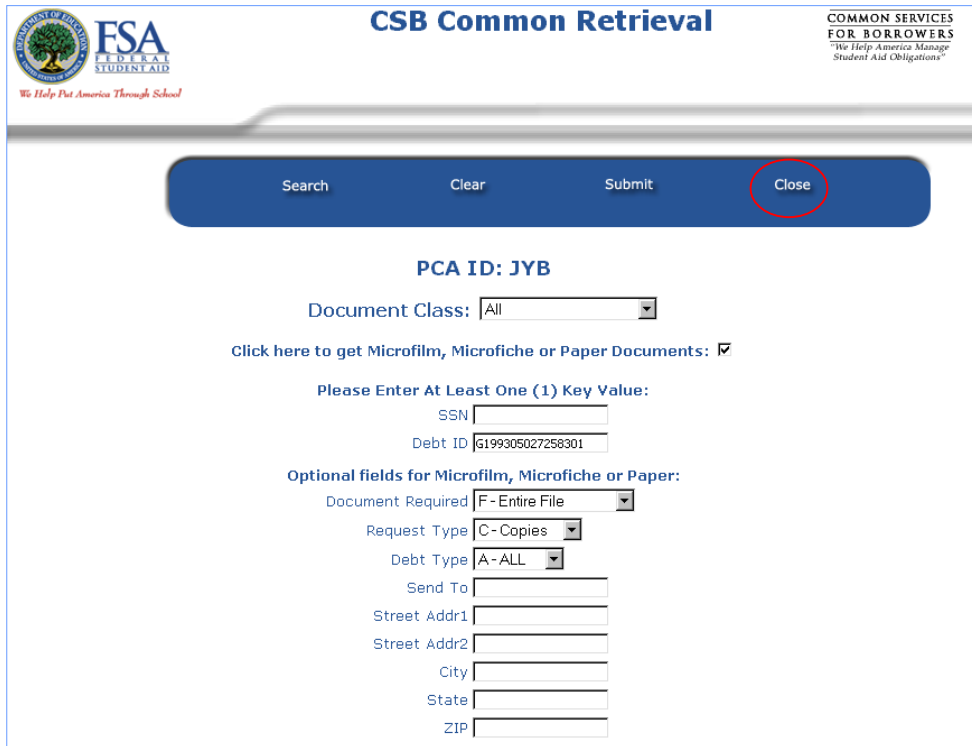
State

ZIP

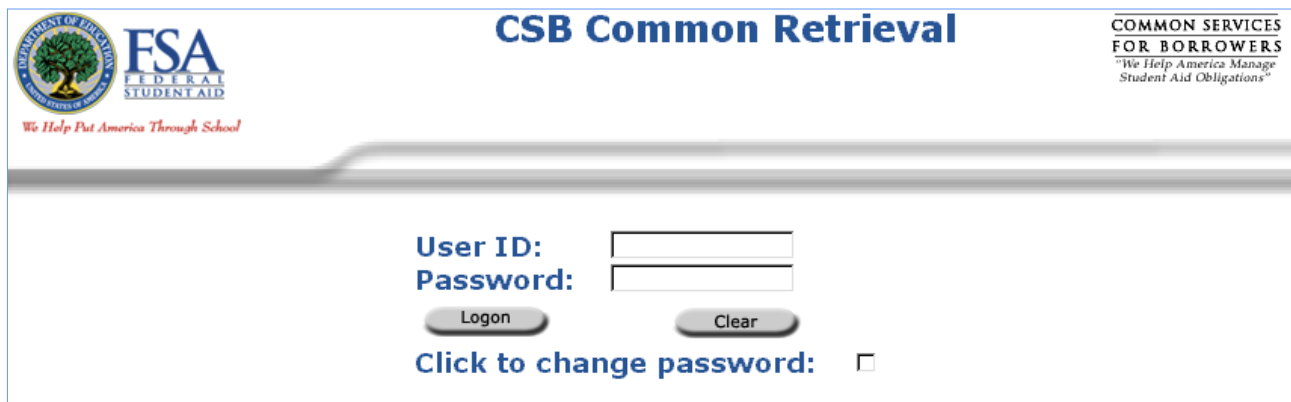
REQUEST SUCCESSFUL for G199205007966101.

Logging Off the CSB Common Retrieval System

Click on **Close**.



The image shows the 'CSB Common Retrieval' search interface. At the top left is the FSA Federal Student Aid logo with the tagline 'We Help Put America Through School'. At the top right is the 'COMMON SERVICES FOR BORROWERS' logo with the tagline 'We Help America Manage Student Aid Obligations'. Below the logos is a blue navigation bar with buttons for 'Search', 'Clear', 'Submit', and 'Close'. The 'Close' button is circled in red. Below the navigation bar, the text 'PCA ID: JYB' is displayed. A 'Document Class' dropdown menu is set to 'All'. Below this is a checkbox labeled 'Click here to get Microfilm, Microfiche or Paper Documents:' which is checked. A section titled 'Please Enter At Least One (1) Key Value:' contains input fields for 'SSN' and 'Debt ID' (which has the value 'G199305027258301'). Below this is a section titled 'Optional fields for Microfilm, Microfiche or Paper:' containing several dropdown menus and input fields: 'Document Required' (set to 'F - Entire File'), 'Request Type' (set to 'C - Copies'), 'Debt Type' (set to 'A - ALL'), 'Send To', 'Street Addr1', 'Street Addr2', 'City', 'State', and 'ZIP'.



The image shows the 'CSB Common Retrieval' login interface. At the top left is the FSA Federal Student Aid logo with the tagline 'We Help Put America Through School'. At the top right is the 'COMMON SERVICES FOR BORROWERS' logo with the tagline 'We Help America Manage Student Aid Obligations'. Below the logos is a login section with labels 'User ID:' and 'Password:' next to input fields. Below the input fields are two buttons: 'Logon' and 'Clear'. Below the buttons is a checkbox labeled 'Click to change password:'. The checkbox is unchecked.

Appendix A PCA AWG Timeline

Day 1 Within 24 hours of receiving the request for hearing (RFH) from the debtor or from ASC, the PCA must document the L102 Notepad with the following information in the following manner:

***** AWG RFH REC'D, PM DATE: MM/DD/YY, THR / UTH *****

Note: PM Date = Postmark Date on envelope, Date on Fax, or Date of other Delivery method.
THR = Timely Hearing Request UTH = Untimely Hearing Request

Day 2 Report the receipt of the RFH to ASC via the AWG Hearing Tracking Program. Submit: **AWG Hearing Received Report**.

Day 3 Thoroughly review the RFH form or letter to identify all the debtor's objection(s) and then proceed to work the account.

1st Request a copy of the debtor's file records from Raytheon

2nd If the debtor does not seem to have submitted appropriate documentation needed to support the objections raised by the debtor on the RFH, contact the debtor by telephone and advise the debtor of whatever additional information maybe required. For example: Claims of Dischargeability due to Closed School, Unauthorized Signature, etc. advise the borrower that he or she must complete a discharge application and that you will forward a copy one, or that the borrower can download a copy from ED's Website. Obtain applications by contacting Customer Service at 1-800-621-3115 or go to ED's website at: [HTTP://WWW.ED.GOV/Offices/OSFAP/DCS](http://WWW.ED.GOV/Offices/OSFAP/DCS), select Forms, then select the application described for that objection, or simply complete and return the form being sent by PCA. Whichever means they choose advise the borrower that the completed form must be returned to you (PCA) by the date you have to return the account to ED (29th Day).

3rd If you are unable to reach the debtor by telephone on the third day, send the debtor the forms attached to the new Request for Documentation Cover letter (see appendix).

4th For any request for hearing (RFH) on which the debtor lists no objections, but merely states that he or she wants a hearing: Prepare Denial of Hearing Request Notice to submit directly to Walter Reid and Ken Gissendaner for signature to send to the borrower. This letter will be on Department Letterhead and signed by a hearing official (see appendix for sample of Notice). You must submit the original request as well as the prepared Notice directly to ASC.

Day 4 -16 Work all accounts properly submitted with sufficient information to render a decision. For example: Financial Hardship claims with pay stubs, Claims of Bankruptcy with case numbers and discharge order, death, and disability claims taking the appropriate actions as identified in this manual. **Submit cancellation notice to ED, as required.**

Day 17 Attempt one more time to obtain application(s) or form(s) from debtors who have not submitted the requested information and re-send the information again or at least advise the debtors that they have only 10 days left to submit the information to your agency before you must turn the account over to ED.

Date 28 Prepare and return **all** RFH based on the following guidelines:

Strictly Written Hearing RFH – submit directly to PIC for Response, unless the debtor has stated no objection(s) to garnishment. If the debtor stated no specific objection – prepare the Denial of hearing request notice for Walter Reid and Ken Gissendaner Signature. Submit a copy: **PIC Manifest Report** to ASC.

PIC
Attn: Beverly Madden
2510 North Dodge Street
Iowa City, IA 52245

Strictly Oral Hearing RFH – submit directly to ASC for Response, unless the debtor has failed to state his objection(s) to garnishment Order clearly. If the debtor has stated no specific objection – prepare the Denial of Hearing Request notice for Walter Reid and Ken Gissendaner Signature. Submit copy: **ASC Manifest Report** with **RFH** to ASC.

AWG Hearings Branch
Attn: John Jordan or Pam Wright
61 Forsyth Street, Room 19T89
Atlanta, GA 30058

Note: “Oral” includes both requests for In-person or Telephone Hearings.

Date 29

Document the L102 Notepad that the RFH package has been forwarded to ASC/PIC as follows: *** **RFH PACKAGE FWD TO ASC/PIC** ***

Appendix A1 What should the PCA include in the Hearing Package for ASC?

1. AWG Hearings Cover Sheet – Revised (03/03)
2. Request For Hearing Form or Letter Requesting Hearing (mandatory)
3. Copy of the File Records from Raytheon (mandatory)
4. A dated copy of Extension of Deadline for Submitting Documentation (if applicable)
5. Any Application(s) or Form(s) submitted by the Debtor (if applicable)
6. Financial Disclosure Form (if applicable)
7. Copies of two (2) pay stubs (if applicable)
8. AWG Hardship Calculator (if applicable)
9. Copy of the PCA Notepad (mandatory)

AWG RFH Cover Sheet

Agency Code: _____ Contact No. # _____ - _____ - _____ Date Rec'd: _____ PM Date: _____ Date Returned ED/ PIC: _____ THR / UTH (circle one) Current AWG Status Code: _____	Prepared By: _____ Date Package Prepared: _____
--	--

Borrower's Name: _____ **SSN:** _____

Type RFH (check one): ☐ **In-Person** ☐ **Telephone** ☐ **Written Record**
 Objection RFH PACKAGE Checklist

Check All Objection(s) Identified Financial Hardship: _____ Balance Dispute: In- Repayment: _____ Repaid SIF/PIF: _____ Incorrect Amount: _____ Bankruptcy: Active Chapter 7/13: _____ Discharged Chapter 7/13: _____ Disability: _____ Death: _____ Legal Exclusion: Employed less than 12 months: _____ Unemployed: _____ Terminated involuntarily from previous employment: _____ Third Party / SSN Dispute: _____ Unpaid Refund Request: _____ Dischargeability Claims: ATB (No GED): _____ ATB (Not Qualified): _____ Closed School: _____ Unauthorized Signature: _____	Check All Enclosed Document(s) _____ Request For Hearing Form or Letter Requesting Hearing Received from debtor and envelop (mandatory) _____ Copy of the File Records from Raytheon (mandatory) _____ A <u>dated</u> copy of <u>Notice Requesting</u> <u>Additional Information</u> (mandatory) _____ Any Application(s) or Form(s) submitted by the Debtor (mandatory) _____ Financial Disclosure Form (if applicable) _____ Copies of two-2 pay stubs (if applicable) _____ AWG Hardship Calculator (if applicable) _____ Copy of the PCA Notepad (mandatory)
---	---

Dates Mailed Requested for Documentation and/or Notified Debtor to submit: _____

Appendix A3 PCA Standard Cover Letter for All Document and Application Request(s)

<PCA Letterhead>

DATE

DEBTOR NAME
ADDRESS
CITY, ST ZIP

RE: NOTICE OF INTENT TO GARNISH
ACCOUNT NO: S000/00/0000
Debt No:

Extension of Deadline for Submitting Application for Loan Discharge Relief and Documentation Supporting Objection to Garnishment

This notice is in response to your written Request for Hearing on your objection(s) to the Notice of Intent to Garnish that you were just sent by the Department of Education. We have been requested by the Department to obtain the information described here from you in order to expedite your hearing.

The Notice of Intent to Garnish explained that you are responsible for providing evidence to support any objection(s) you make to garnishment, including, for loan obligations, completed application(s) to support any claims that you qualify for loan discharge relief. The Notice also explained that, with some exceptions, the Department would consider only evidence or applications that you submitted with your Request for Hearing. You have provided no evidence or application to support the objection(s) or claim for discharge relief that you raised in your Request for Hearing.

The Department extends until **mm/dd/yy** the deadline for submitting evidence or applications for loan discharge relief that you wish considered in the hearing. After that date we must forward your Request for Hearing and any material we have received from you by that date to the Department's Administrative Wage Garnishment Hearing Branch. Education will conduct the hearing you requested on your objections, based on that material and the Department's own records regarding your debt. Unless you submit material to support your objections or claim for loan discharge relief, the Department advises that it may find that your claim or objection(s) are not substantiated, and that the debt is fully enforceable by garnishment at this time. If you have any evidence or application to support your objection(s) or claim for relief that you want the Department to consider, please forward that material promptly to the following address:

U.S. Department of Education
<C/O: PCA Mailing Address>
Fax Number: PCA Fax Number

You may contact the Department's Customer Service Number at **1-800-621-3115** to request the appropriate financial disclosure form or discharge application or go to the Department's website at: <http://www.ed.gov/offices/OSFAP/DCS>, select Forms, and then download the appropriate application or form to present your objection. You may also complete and return the enclosed form(s) for other objections. If you filed bankruptcy over ten (10) years ago, please provide the case number, date of filing, location filed, and a copy of the Notice of Discharge.

If you move before you receive a response, please provide a change of address and telephone number where we may contact you. If you have any further questions, you may contact your Contract Service Representative at 1-888-888-8888.

Enclosures:

Appendix A4 Denial of Oral Hearing Request– No Reason Stated



FEDERAL STUDENT AID

UNITED STATES DEPARTMENT OF EDUCATION
ADMINISTRATIVE HEARINGS BRANCH
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303

PHONE NUMBER: 404-562-6012

FAX NUMBER: 404-562-6110

DATE

Debtor's Name
ADDRESS
CITY, STATE ZIP

Re: **Guaranteed** Student Loan (**GSL**)
Perkins Student Loan (NDSL)
Federal Insured Student Loan (FISL)
Federal Direct Student Loan (FDSL)
PELL Overpayment (POVR)
Account No: S
Debt No:
Debt No:
Debt No:
Balance: \$0.00

Denial of oral hearing request

You objected to garnishment to collect the debt(s) listed above, and requested an oral hearing to present your objections. Our notice explained that we provide an oral hearing if you show, in your Request for Hearing, good reason to believe that we could not resolve the issues in dispute by review of the documentary evidence, including your statements in the request for hearing.

You provided no explanation in your Request for Hearing why an oral hearing was needed to resolve your objections. We therefore deny your request for an oral hearing.

Deadline for presenting objections and supporting evidence and argument

We will conduct the hearing you requested as a written records hearing. We will consider in this hearing any objections, evidence and arguments you have already presented. In addition, we will also consider any objections, evidence and arguments you submit within seven (7) business days of the date of this notice. A business day is any day Monday through Friday, unless that day is a Federal holiday.

Submit any new objections and any evidence and arguments not already presented to support any objection you are raising to the following address:

U.S. Department of Education
AWG Hearings Branch
61 Forsyth Street, Room #19T89
Atlanta, GA 30303

Hearings Official
Atlanta Service Center

Appendix A5 Denial of Hearing Requested Timely – No Objection Stated



FEDERAL STUDENT AID

UNITED STATES DEPARTMENT OF EDUCATION
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303
PHONE NUMBER: 404-562-6012 FAX NUMBER: 404-562-6110

Date: mm/dd/yy

Debtor's Name

Debtor's Home Address

City, ST Zip Code+4

Dear Debtor:

We received a Request for Hearing from you in response to the Notice of Proposed Wage Garnishment we sent you recently.

In your Request for Hearing, you indicated that you wanted a hearing, but you did not indicate that you had any objection to garnishment to collect the debt described in the notice, nor did you object to collection of that debt by withholding from your disposable pay at the 15% rate described in that notice. The purpose of a hearing is to receive and consider evidence, including testimony, written statements, and records, and argument offered by the debtor to support objections to garnishment. Because you state no objection of any kind to garnishment, there is no reason to conduct a hearing. We will therefore within ten business days of this notice order your employer to begin withholding from your wages to satisfy this debt.

You may raise specific objections to garnishment at any time. If you raise specific objections, we will consider those objections and make a determination on those objections. However, we will not suspend garnishment action pending that determination. You can obtain a copy of a Request for Hearing from <http://www.ed.gov/offices/OSFAP/DCS/>, then select "Default," then "Administrative Wage Garnishment," then "Request for Hearing."

Note that if you object to garnishment on hardship grounds within six (6) months of the date the order is issued, we will consider that objection only if you show that extraordinary circumstances have occurred that substantially worsen your financial circumstances from the present. These include injury, divorce, or catastrophic illness. After six (6) months, this restriction does not apply to hardship objections.

Administrative Hearings Branch

Appendix A6 Denial of Hearing Requested Untimely – No Objection Stated



FEDERAL STUDENT AID

UNITED STATES DEPARTMENT OF EDUCATION
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303
PHONE NUMBER: 404-562-6012 FAX NUMBER: 404-562-6110

Date: mm/dd/yy

Debtor's Name

Debtor's Home Address

City, ST Zip Code+4

Dear Debtor:

We received a Request for Hearing from you in response to the Notice of Proposed Wage Garnishment we sent you recently. Your Request was postmarked (if mailed) or delivered to us after the deadline explained in that Notice.

In your Request for Hearing, you indicated that you wanted a hearing, but you did not indicate that you had any objection to garnishment to collect the debt described in the notice, nor did you object to collection of that debt by withholding from your disposable pay at the 15% rate described in that notice. The purpose of a hearing is to receive and consider evidence, including testimony, written statements, and records, and argument offered by the debtor to support objections to garnishment. Because you state no objection of any kind to garnishment, there is no reason to conduct a hearing.

Because your response to the Notice was not timely, we did not delay garnishment action, and we are issuing an order to your employer to begin withholding from your wages to satisfy this debt.

You may raise specific objections to garnishment at any time. If you raise specific objections, we will consider those objections and make a determination on those objections. However, we will not suspend garnishment action pending that determination. You can obtain a copy of a Request for Hearing from <http://www.ed.gov/offices/OSFAP/DCS/>, then select "Default," then "Administrative Wage Garnishment," then "Request for Hearing."

Note that if you object to garnishment on hardship grounds within six (6) months of the date the order is issued, we will consider that objection only if you show that extraordinary circumstances have occurred that substantially worsen your financial circumstances from the present. These include injury, divorce, or catastrophic illness. After six (6) months, this restriction does not apply to hardship objections.

Administrative Hearings Branch

Appendix B

T11 - Transitional Notice to 15% AWG

Debtor's Name
Debtor's Home Address
City, ST Zip Code+4

Re: Debt No.
Debt No.
Debt No.

Balance \$\$\$\$\$\$.cc

Response Deadline: mm/dd/yy

Notice of Proposed Wage Garnishment Due to Debt Owed to U.S. Government

The U.S. Department of Education (ED) intends to order your employer to withhold **15%** of your disposable pay to satisfy your defaulted loan or grant obligation(s) listed above. The legal basis for this action is Section 31001(o) of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321-358 (Apr. 26, 1996), codified at 31 U.S.C. 3720D. The balance stated above includes, for loan debts, the principal loaned and any capitalized interest; for grant debts, the amount of overpayment; for all debts, accrued interest and fees, less any payments, refunds, or offsets received. We apply any payments we recover first to defray our collection costs (currently 25% of the amount of unpaid principal and interest), next to interest; last to principal. This notice explains your right to object to this action; read this entire notice for an explanation of your rights and how to use them.

We received the request for hearing you filed in response to a notice of intent to garnish we sent you some time ago. We have not yet provided the hearing you requested and we will provide you that hearing shortly. This new notice explains our intention to garnish at the rate of up to 15% of your disposable pay. Disposable pay is pay less health insurance premiums and amounts required by law to be withheld (e.g., Social Security, Federal and State taxes). We will consider any new objections and any additional evidence you submit. If you do not submit any new objections or additional evidence by the deadline date, we will conduct the hearing based on the objections and evidence you already submitted.

If you do not timely exercise your rights in the way described below or you do not make a repayment agreement or you later fail to make the payments required, ED will order your employer to withhold and send to ED 15% of your disposable pay each pay period until the balance, with accruing interest and collection costs, is paid in full. (Note: the amount actually withheld to pay this debt may be less than 15% of disposable pay, depending on your income and other claims against you.)

You have the following rights regarding this action:

You have the right to inspect and copy ED records relating to your debt. Request ED records through the Customer Service number below. (A request for records will not delay garnishment action unless you have also timely objected to garnishment in the manner specified in this notice.)

You have the right to object to the proposed garnishment increase and to a hearing on your objection.

- You may object for reasons concerning the existence, amount, and enforceability of the debt.
- You may also object that having amounts equal to 15% of your disposable pay withheld from your disposable pay or making voluntary payments in that amount, would cause financial hardship for you and your dependents.

You must make a hearing request in writing and send it to ED at the address on the enclosed Request for Hearing (RFH) form. If your request is postmarked or received by us within 30 calendar days of the date of this notice, we will not garnish until we have completed the requested hearing. If your request for hearing is postmarked (if mailed) or received (if not mailed) after that date, we will still conduct a hearing but we will not delay this garnishment unless you demonstrate to us that the delay was caused by factors over which you had no control. If we find that the debt is not owed as stated or not enforceable at this time, we will refund payments as needed.

Make your objection by checking the appropriate area on the RFH form. You may request that your hearing be conducted as an oral hearing or written records hearing. Any hearing will include a review of your written statements in the RFH, any records you submit with the RFH, and relevant records ED holds on your debt.

In or with your Request for Hearing you must present all your objections and submit the evidence that supports them. However, you may submit your objections and evidence later if --

- You request an oral hearing, or
- You timely request a written hearing and also request access to your debt records, or
- You request, and we agree to, an extension for submitting objections and evidence.

In our response to your request(s), we will explain the deadline that applies to your situation; that deadline will be at least 7 business days after our response.

Compliance with a repayment agreement will prevent garnishment. To do so, you must make a written agreement with us to repay this debt in monthly installments equal to 15% of your disposable pay per month, and make the first payment by the Response Deadline on page 1. If you believe you cannot afford that amount, **contact Customer Service** at

Collection Agency
(999) 999-9999

Repayment under a satisfactory repayment agreement can restore eligibility for Federal aid and restore deferment and other benefits previously available on loans. For information, contact Customer Service.

We will cancel garnishment action if we receive payment in full at

U.S. Department of Education
National Payment Center
P.O. Box 4169
Greenville, Texas 75403-4169

Make all payment instruments payable to the "U.S. Department of Education" and include your name and Social Security Number on the face of the payment instrument.

We will not garnish now if you prove that you have been employed at your current employer for less than 12 months and were involuntarily separated from your most recent previous employment. To object on this ground, check that box on the RFH and provide proof described there.

Your employer may not discharge you from employment nor take disciplinary action against you, as a result of an Order for Withholding nor can a prospective employer refuse to employ you as a result of this proposed action or existence of an Order for Withholding. If an employer takes any of these actions, you may sue that employer in a state or federal court for reinstatement, back pay, attorney's fees, and punitive damages. Our determination on your objections affect only the debt described in this notice of garnishment, and is totally separate from any notice of proposed Federal payment offset or garnishment that you may have received from a Guarantee Agency. If you received a notice of collection action from a Guarantee Agency, you must present any objections to collection action to that agency.

Enclosures: **Request for Hearing Form (RFH)**

Financial Disclosure Form

Customer Service Number: 1-800-621-3115

REQUEST FOR HEARING

If you object to garnishment of your wages for the debt described in the notice, you can use this form to request a hearing. Your request must be in writing and mailed or delivered to the address below.

Your Name: _____ SSN: _____

Address: _____

Telephone: _____

Employer: _____

Address: _____

Telephone: _____

Beginning Date Of Current Employment: _____

() CHECK HERE if you object that garnishment in amounts equal to **15%** of your disposable pay would cause financial hardship to you and your dependents. (To arrange voluntary repayment, contact customer service at the number below.)

You must complete either the enclosed **FINANCIAL DISCLOSURE FORM** or a Financial Disclosure Form of your choosing to present your hardship claim. You must enclose copies of earnings and income records, and proof of expenses, as explained on the form. If your request for an oral hearing granted, you will be notified of the date, time, and location of your hearing. If your request for an oral hearing is denied, ED will make its determination of the amounts you should pay based on a review of your written materials.

NOTE: You should also state below any other objections you have to garnishment to collect this debt at this time.

NOTE: IT IS IN YOUR INTEREST TO REQUEST COPIES OF ALL DOCUMENTATION HELD BY ED BY CALLING THE CUSTOMER SERVICE NUMBER LISTED ON THE ENCLOSED NOTICE PRIOR TO COMPLETING A REQUEST FOR HEARING.

I. HEARING REQUEST (Check ONLY ONE of the following)

() I want a written records hearing of my objection(s) based on ED's review of this written statement, the documents I have enclosed, and the records in my debt file at ED.

() I want an in-person hearing at the ED hearing office to present my objection(s). I understand that I must pay my own expenses to appear for this hearing.

I want this In-Person hearing held in: _____ Atlanta, GA, _____ Chicago, IL, _____ San Francisco, CA.
(Check the location you wish for the hearing.)

() I want a hearing by telephone to present my objections. You must provide a daytime telephone number at which you can be contacted between the hours of 8:00 am to 4:00 pm, Monday through Friday. I can be reached at: (____) ____ - ____.

II IF YOU WANT AN IN-PERSON OR TELEPHONE HEARING, YOU MUST COMPLETE THE FOLLOWING:

The debt records and documents I submitted to support my statement in Part III do not show all the material (important) facts about my objection to collection of this debt. I need a hearing to explain the following important facts about this debt: (**EXPLAIN** the additional facts that you believe make a hearing necessary on a separate sheet of paper. If you have already fully described these facts in your response in Part III, **WRITE HERE** the number of the objection in which you described these facts___.)

Note: If you do not request an in-person or telephone hearing, we will review your objection based on information and documents you supply with this form and on records in your loan file. We provide an oral hearing to a debtor who requests an oral hearing and shows in the request for the hearing good reason to believe that we cannot resolve the issues in dispute by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

III. Check the objections that apply. EXPLAIN any further facts concerning your objection on a separate sheet of paper. ENCLOSE the documents described here (if you do not enclose documents, ED will consider your objection(s) based on the information on this form and records held by ED).

For some objections you must submit a completed application. Obtain applications by contacting Customer Service at number below, or go to ED's website at:

<http://www.ed.gov/offices/OSFAP/DCS>, **select Forms, then select the application described for that objection.**

1. () I do not owe the full amount shown because I repaid some or all of this debt. (ENCLOSE: copies of the front and back of all checks, money orders and any receipts showing payments made to the holder of the debt.)
2. () I am making payments on this debt as required under the repayment agreement I reached with the holder of the debt. (ENCLOSE: copies of the repayment agreement and copies of the front and back of checks where you paid on the agreement.)
3. () I filed for bankruptcy and my case is still open. (ENCLOSE: copies of any documents from the court that shows the date that you filed the name of the court, and your case number.)
4. () This debt was discharged in bankruptcy. (ENCLOSE: copies of debt discharge order and the schedule of debts filed with the court.)
5. () The borrower has died. (ENCLOSE: CERTIFIED Copy of Death Certificate.) For Loans only.
6. () I am totally and permanently disabled - unable to work and earn money because of an impairment that is expected to continue indefinitely or result in death. Obtain and submit completed Total and Permanent Disability Cancellation Request; must be completed by physician. For loans only.
7. () I used this loan to enroll in _____ (school) on or about ____/____/____, and I withdrew from school on or about ____/____/____. I paid the school \$_____ and I believe that I am owed, but have not been paid, a refund from the school of \$_____. Obtain and submit completed Loan Discharge Application: Unpaid Refund (Enclose any records you have showing your withdrawal date). For loans only.
8. () I used this loan to enroll in _____ (school) on or about ____/____/____, and I was unable to complete my education because the school closed. Obtain and submit completed Loan

Discharge Application: Closed School. (ENCLOSE: any records you have showing your withdrawal date.)
For loans only.

9. () This is not my Social Security Number, and I do not owe this debt. (ENCLOSE: a copy of your driver's license or other identification issued by a federal, state or local government agency, and a copy of your Social Security Card.)

10. () I believe that this debt is not an enforceable debt in the amount stated for the reason explained in the attached letter. (Attach a letter explaining any reason other than those listed above for your objection to collection of this debt amount by garnishment of your salary. ENCLOSE any supporting records.)

11. () I did not have a high school diploma or GED when I enrolled at the school I attended with this guaranteed student loan. The school did not properly test my ability to benefit from the training offered. Obtain and submit completed Loan Discharge Application: False Certification of Ability to Benefit. Enclose any records you have showing your withdrawal date For loans only.

12. () When I borrowed this guaranteed student loan to attend _____(school), I had a condition (physical, mental, age, criminal record) that prevented me from meeting State requirements for performing the occupation for which it trained me. Obtain and submit completed Loan Discharge Application: False Certification (Disqualifying Status). For loans only.

13. () I was involuntarily terminated from my last employment and I have been employed in my current job for less than twelve months. (Attach statement from employer showing date of hire in current job and statement from prior employer showing involuntary termination.)

14. () I believe that _____(School) without my permission signed my name on the loan application, promissory note, loan check or electronic funds transfer (EFT) authorization. Obtain and submit completed Loan Discharge Application: Unauthorized Signature / Unauthorized Payment. (Enclose any records you have showing your withdrawal date). For loans only.

IV I state under penalty of law that the statements made on this request are true and accurate to the best of my knowledge.

DATE: _____ SIGNATURE: _____

SEND THIS REQUEST FOR HEARING FORM TO: U.S. DEPARTMENT OF EDUCATION
Atlanta Service Center
Attn: AWG Hearings Branch
61 Forsyth Street, Room 19T89
ATLANTA, GA 30303

If you wish to arrange a voluntary agreement for payments in amounts equal to 15% of your disposable pay, do not use this form. Instead, call the Customer Service Number Below.

Customer Service: Collection Agency
(999) 999-9999

Violation of any such agreement may result in an immediate order to your employer for garnishment of 15% of your disposable pay.

This is an attempt to collect a debt and any information obtained will be used for that purpose.

U.S. Department of Education

Financial Disclosure Statement

To evaluate a hardship claim, ED compares the expenses you claim and support against averages spent for those expenses by families of the same size and income as yours. ED considers proven expenses as reasonable up to the amount of these averages. If you claim more for an expense than the average spent by families like yours, you must provide persuasive explanation why the amount you claim is necessary. These average amounts were determined by the IRS from different government studies. You can find the average expense amount that the Department uses at this website: <http://www.ed.gov/offices/OSFAP/DCS>, then select "Administrative Wage Garnishment," and then select "COLLECTION FINANCIAL STANDARDS."

Provide complete information about your family income, expenses, and assets.

- **Complete all items.** Do not leave any item blank. If the answer is zero, write zero.
- **Provide documentation of expenses.** Expenses may not be considered if you do not provide documents supporting the amounts claimed. **You must submit proof of Childcare/Other Caregiver expenses, in order to receive full credit for claimed caregiver cost. To obtain the form, contact Customer Service at: 1-8--621-3115 or go to ED website at: <http://www.ed.gov/offices/OSFAP/DCS>, then select "forms," then Declaration of Caregiver Services.**
- **Provide documentation of all sources of income.** You must submit two (2) most recent pay stubs for yourself, spouse, and all sources of income in your household. You may submit last year's W-2's and 1040 Income Tax Filing as proof of household income. Failure to provide this information may result in a denial of your claim of financial hardship.

Income

Name: _____ Social Security No.: _____

Address: _____

Phone: _____

County: _____

Current Employer: _____ Date Employed: _____

Employer Phone: _____ Present Position: _____

Gross Income: \$ _____ ☐ Weekly ☐ Bi-Weekly ☐ Monthly ☐ Other _____

Net Income: \$ _____ ☐ Weekly ☐ Bi-Weekly ☐ Monthly ☐ Other _____

***ENCLOSE A COPY OF YOUR TWO MOST RECENT PAY STUBS ***

ENCLOSE LAST YEAR'S W-2s AND 1040, 1040A, 1040EZ or other IRS FILING

Number of dependents: _____ (including yourself) Marital status: ☐ Married ☐ Single ☐ Divorced

Spouse's name: _____ Spouse's SSN: _____

Gross Income: \$ _____ ☐ Weekly ☐ Bi-Weekly ☐ Monthly ☐ Other _____

Net Income: \$ _____ ☐ Weekly ☐ Bi-Weekly ☐ Monthly ☐ Other _____

***ENCLOSE A COPY OF THE TWO MOST RECENT PAY STUBS ***

ENCLOSE LAST YEAR'S W-2s AND 1040, 1040A, 1040EZ or other IRS FILING

Other contributing residents: _____ **SSN:** _____
Gross Income: \$ _____ ☐ Weekly ☐ Bi-Weekly ☐ Monthly ☐ Other _____
Net Income: \$ _____ ☐ Weekly ☐ Bi-Weekly ☐ Monthly ☐ Other _____

*****ENCLOSE A COPY OF THE TWO MOST RECENT PAY STUBS *****

*****ENCLOSE LAST YEAR'S W-2s AND 1040, 1040A, 1040EZ or other IRS FILING*****

Other Income

Child support: \$ _____ ☐ Weekly ☐ Bi-Weekly ☐ Monthly ☐ Other
Alimony: \$ _____ ☐ Weekly ☐ Bi-Weekly ☐ Monthly ☐ Other
Interest: \$ _____ ☐ Weekly ☐ Bi-Weekly ☐ Monthly ☐ Other
Public assistance: \$ _____ ☐ Weekly ☐ Bi-Weekly ☐ Monthly ☐ Other
Other: \$ _____ Describe: _____

Please State and Explain Amounts Deducted from your pay on pay-stubs:

Life Insurance \$ _____
Medical & Dental Insurance: \$ _____
401k: \$ _____
Retirement \$ _____
Child Support: \$ _____
Garnishment: \$ _____
Other: \$ _____

Monthly Expenses

Shelter (SEND COPY OF MORTGAGE OR LEASE, *INSURANCE, MAINTENANCE PAYMENTS*)

Rent/Mortgage: \$ _____ Paid to whom: _____
2nd home mortgage: \$ _____ Paid to whom: _____
Home insurance: \$ _____ Paid to whom: _____
Maintenance: \$ _____ Paid to whom: _____
Other: \$ _____ Describe: _____

Household expenses

Food Expenses: \$ _____ (Monthly)
Housekeeping Supplies: \$ _____ (Monthly)
Clothing & Cleaning: \$ _____ (Monthly)
Personal Care Services and Expenses: \$ _____ (Monthly)

Utilities (SEND COPIES OF BILLS)

Electric: \$ _____ Gas: \$ _____
Water/Sewer \$ _____ Garbage pickup: \$ _____
Basic telephone: \$ _____ Other: \$ _____
Describe: _____

Medical (SEND COPIES OF BILLS)

Insurance Premiums \$ _____ /per month (*Only list payments not deducted from paycheck*)
Bill payments \$ _____ /per month (*Only list payments not covered by insurance*)
Other: \$ _____ /per month Describe: _____

Transportation (SEND COPIES OF CAR PAYMENT AGREEMENT OR BILLS)

Number of cars _____

1 st Car payment:	\$ _____/per month	2nd Car payment:	\$ _____/per month
Gas and oil:	\$ _____/per month	Public transportation:	\$ _____/per month
Car insurance:	\$ _____/per month	Parking:	\$ _____/per month
Other:	\$ _____ Describe: _____		

Child Care (SEND COPIES OF BILLS, COURT ORDERS, CONTRACTS, DECLARATION OF CAREGIVER SERVICES)

Child care:	\$ _____/per month	Number of children:	_____
Child support:	\$ _____/per month	Number of children:	_____
Other:	\$ _____/per month	Describe:	_____

Other Expenses (Attach a list describing expense, monthly payment and enclose bills)

Other Insurance: \$ _____/per month

Describe: _____

Based on this Statement, I think I can afford to pay \$ _____ per month

I declare under penalty of law that the answers and statements contained herein are, to the best of my knowledge and belief, true, correct, and complete.

Signature _____

Date _____

Warning: 18 U.S.C. 1001 provides that “whoever...knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation...shall be fined up to \$10,000.00 or imprisoned up to five years, or both.”

Complete, sign, and return the requested information to:

U.S. Department of Education
AWG Hearing Unit
61 Forsyth Street, Room 19T89
Atlanta, GA 30303

Privacy Act Notice

This request is authorized under 31 U.S.C. 3711, 20 U.S.C. 1078-6, and 20 U.S.C. 1095a. You are not required to provide this information. If you do not, we cannot determine your financial ability to repay your student aid debt. The information you provide will be used to evaluate your ability to pay. It may be disclosed to government agencies and their contractors, to employees, lenders, and others to enforce this debt; to third parties in audit, research, or dispute about the management of this debt; and to parties with a right to this information under the Freedom of Information Act or other federal law, or with your consent. These uses are explained in the Federal Register of June 4, 1999, Vol. 64, p. 30166, revised Dec. 27, 1999, Vol. 64, p. 72407. We will send a copy at your request.

This is an attempt to collect a debt and any information obtained will be used for that purpose.

Appendix C T12 DCIA Notice of Proposed AWG (formerly SO2)

Debtor Name

Debtor's Home Address

City, ST Zip Code+4

Re: Debt No.

Debt No.

Debt No.

Balance \$\$\$\$\$\$.cc

Response Deadline: mm/dd/yy

Notice of Proposed Wage Garnishment Due to Debt Owed to U.S. Government

The U.S. Department of Education (ED) intends to order your employer to withhold 15% of your disposable pay to satisfy your defaulted loan or grant obligation(s) listed above. Disposable pay is pay less health insurance premiums and amounts required by law to be withheld (e.g., Social Security, Federal and State taxes). The legal basis for this action is Section 31001(o) of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321-358 (Apr. 26, 1996), Codified at 31 U.S.C. 3720D. The balance stated above includes, for loan debts, the principal loaned and any capitalized interest; for grant debts, the amount of overpayment; for all debts, accrued interest and fees, less any payments, refunds, or offsets received. We apply any payments we recover first to defray our collection costs (currently 25% of the amount of unpaid principal and interest), next to interest; last to principal. This notice explains your right to object to this action; read this entire notice for an explanation of your rights and how to use them.

If you do not timely exercise your rights in the way described below or you do not make a repayment agreement or you later fail to make the payments required by such agreement, ED will order your employer to withhold and send to ED 15% of your disposable pay each pay period until the balance, with accruing interest and collection costs we incur, is paid in full. (Note: the amount actually withheld to pay this debt may be less than 15% of disposable pay, depending on your income and other claims against you.)

You have the following rights regarding this action:

You have the right to inspect and copy ED records relating to your debt. Request ED records through the Customer Service number below. (A request for records will not delay garnishment action unless you have also timely objected to garnishment in the manner specified in this notice.)

You have the right to object to the proposed garnishment and to a hearing on your objection.

- You may object for reasons concerning the existence, amount, and enforceability of the debt.
- You may also object that having amounts equal to 15% of your disposable pay withheld from your disposable pay or making voluntary payments in that amount would cause financial hardship for you and your dependents.

You must make a hearing request in writing, and send it to ED at the address on the enclosed Request for Hearing (RFH) form. If your request is postmarked or received by us within 30 calendar days of the date of this notice, we will not garnish until we have completed the requested hearing. If your request for hearing is postmarked (if mailed) or received (if not mailed) after that date, we will still conduct a hearing but we will not delay this garnishment unless you demonstrate to us that the delay was caused by factors over which you had no control. If we find that the debt is not owed as stated or not enforceable at this time, we will refund payments as needed.

Make your objection by checking the appropriate area on the RFH form. You may request that your hearing be conducted as an oral hearing or written records hearing. Any hearing will include a review of your written statements in the RFH, any records you submit with the RFH, and relevant records ED holds on your debt.

In or with your Request for Hearing you must present all your objections and submit the evidence that supports them. However, you may submit your objections and evidence later if --

- You request an oral hearing, or
- You timely request a written hearing and also request access to your debt records, or
- You request, and we agree to, an extension for submitting objections and evidence.

In our response to your request(s), we will explain the deadline that applies to your situation; that deadline will be at least 7 business days after our response.

Compliance with a repayment agreement will prevent garnishment. To do so, you must make a written agreement with us to repay this debt in monthly installments equal to 15% of your disposable pay per month, and make the first payment by the Response Deadline on page 1. If you believe you cannot afford that amount, **contact Customer Service** at

Collection Agency
(999) 999-9999

Repayment under a satisfactory repayment agreement can restore eligibility for Federal aid and restore deferment and other benefits previously available on loans. For information, contact Customer Service.

We will cancel garnishment action if we receive payment in full at

U.S. Department of Education
National Payment Center
P.O. Box 4169
Greenville, Texas 75403-4169

Make all payment instruments payable to the "U.S. Department of Education" and include your name and Social Security Number on the face of the payment instrument.

We will not garnish now if you prove that you have been employed at your current employer for less than 12 months and were involuntarily separated from your most recent previous employment. To object on this ground, check that box on the RFH and provide proof described there.

Your employer may not discharge you from employment nor take disciplinary action against you, as a result of an Order for Withholding nor can a prospective employer refuse to employ you as a result of this proposed action or existence of an Order for Withholding. If an employer takes any of these actions, you may sue that employer in a state or federal court for reinstatement, back pay, attorney's fees, and punitive damages. Our determination on your objections affects only the debt(s) described in this notice of garnishment, and is totally separate from any notice of proposed Federal payment offset or garnishment which you may have received from a Guarantee Agency. If you received a notice of collection action from a Guarantee Agency, you must present any objections to collection action to that agency.

Customer Service Number: 1-800-621-3115

Enclosures: **Request for Hearing Form (RFH)**
Financial Disclosure Form

Appendix D T07 - Notice to Resume/Re-Start Suspended Garnishment Action

Debtor's Name
Debtor's Home Address
City, ST Zip Code+4

Re: Debt No.
Debt No.
Debt No.
Balance \$\$\$\$\$\$.cc
Response Deadline: mm/dd/yy

Notice of Proposed Wage Garnishment Due to Debt Owed to U.S. Government

The U.S. Department of Education (ED) intends to order your employer to withhold 15% of your disposable pay to satisfy your defaulted loan or grant obligation listed above. Disposable pay is pay less health insurance premiums and amounts required by law to be withheld (e.g., Social Security, Federal and State taxes). The legal basis for this action is Section 31001(o) of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321-358 (Apr. 26, 1996), Codified at 31 U.S.C. 3720D. The balance stated above includes, for loan debts, the principal loaned and any capitalized interest; for grant debts, the amount of overpayment; for all debts, accrued interest and fees, less any payments, refunds, or offsets received. We apply any payments we recover first to defray our collection costs (currently 25% of the amount of unpaid principal and interest), next to interest; last to principal. This notice explains your right to object to this action; read this entire notice for an explanation of your rights and how to use them.

Some months ago, we notified you that we determined that garnishment of your wages would cause you financial hardship. For that reason, we suspended for 6 months any attempt to collect by wage garnishment. This temporary suspension of garnishment of your wages either is about to expire or has recently expired.

You have the following rights regarding this action:

You have the right to inspect and copy ED records relating to your debt. Request ED records through the Customer Service number below. (A request for records will not delay garnishment action unless you have also timely objected to garnishment in the manner specified in this notice.)

You have the right to object to the proposed garnishment and to a hearing on your objection.

- You may object for reasons concerning the existence, amount, and enforceability of the debt.
- You may also object that having amounts equal to 15% of your disposable pay withheld from your disposable pay or making voluntary payments in that amount, would cause financial hardship for you and your dependents.

You must make a hearing request in writing, and send it to ED at the address on the enclosed Request for Hearing (RFH) form. If your request is postmarked or received by us within 30 calendar days of the date of this notice, we will not garnish until we have completed the requested hearing. If your request for hearing is postmarked (if mailed) or received (if not mailed) after that date, we will still conduct a hearing but we will not delay this garnishment unless you demonstrate to us that the delay was caused by factors over which you had no control. If we find that the debt is not owed as stated or not enforceable at this time, we will refund payments as needed.

Make your objection by checking the appropriate area on the RFH form. You may request that your hearing be conducted as an oral hearing or written records hearing. Any hearing will include a review of your written statements in the RFH, any records you submit with the RFH, and relevant records ED holds on your debt. In or with your Request for Hearing you must present all your objections and submit the evidence that supports them. However, you may submit your objections and evidence later if --

- You request an oral hearing, or
- You timely request a written hearing and also request access to your debt records, or
- You request, and we agree to, an extension for submitting objections and evidence.

In our response to your request(s), we will explain the deadline that applies to your situation; that deadline will be at least 7 business days after our response.

Compliance with a repayment agreement will prevent garnishment. To do so, you must make a written agreement with us to repay this debt in monthly installments equal to 15% of your disposable pay per month, and make the first payment by the Response Deadline on page 1. If you believe you cannot afford that amount, contact Customer Service at

Collection Agency
(999) 999-9999

Repayment under a satisfactory repayment agreement can restore eligibility for Federal aid and restore deferment and other benefits previously available on loans. For information, contact Customer Service.

We will cancel garnishment action if we receive payment in full at

U.S. Department of Education
National Payment Center
P.O. Box 4169
Greenville, Texas 75403-4169

Make all payment instruments payable to the "U.S. Department of Education" and include your name and Social Security Number on the face of the payment instrument.

We will not garnish now if you prove that you have been employed at your current employer for less than 12 months and were involuntarily separated from your most recent previous employment. To object on this ground, check that box on the RFH and provide proof described there.

Your employer may not discharge you from employment nor take disciplinary action against you, as a result of an Order for Withholding nor can a prospective employer refuse to employ you as a result of this proposed action or existence of an Order for Withholding. If an employer takes any of these actions, you may sue that employer in a state or federal court for reinstatement, back pay, attorney's fees, and punitive damages. Our determination on your objections affects only the debt(s) described in this notice of garnishment, and is totally separate from any notice of proposed Federal payment offset or garnishment which you may have received from a Guarantee Agency. If you received a notice of collection action from a Guarantee Agency, you must present any objections to collection action to that agency.

Enclosures: Request for Hearing Form (RFH)
Financial Disclosure Form
Customer Service Number: 1-800-621-3115

Appendix E T09 Notice to Increase Reduced Garnishment Payment

Debtor's Name
Debtor's Home Address
City, ST Zip Code+4

Re: Debt No.
Debt No.
Debt No.
Balance \$\$\$\$\$\$.cc
Response Deadline: mm/dd/yy

Notice of Proposed Wage Garnishment **Due to Debt Owed to U.S. Government**

The U.S. Department of Education (ED) intends to order your employer to withhold 15% of your disposable pay to satisfy your defaulted loan or grant obligation(s) listed above. Disposable pay is pay less health insurance premiums and amounts required by law to be withheld (e.g., Social Security, Federal and State taxes). The legal basis for this action is Section 31001(o) of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321-358 (Apr. 26, 1996), Codified at 31 U.S.C. 3720D. The balance stated above includes, for loan debts, the principal loaned and any capitalized interest; for grant debts, the amount of overpayment; for all debts, accrued interest and fees, less any payments, refunds, or offsets received. We apply any payments we recover first to defray our collection costs (currently 25% of the amount of unpaid principal and interest), next to interest; last to principal. This notice explains your right to object to this action; read this entire notice for an explanation of your rights and how to use them.

Some months ago, we notified you that we had determined that your financial circumstances warranted garnishment of your wages at a reduced rate. For that reason, we reduced for a 6-month period the amount to be withheld to an amount we determined would not cause financial hardship. This temporary reduction in garnishment of your wages either is about to expire or has recently expired. We now intend to order withholding at the full 15% rate.

You have the following rights regarding this action:

You have the right to inspect and copy ED records relating to your debt. Request ED records through the Customer Service number below. (A request for records will not delay garnishment action unless you have also timely objected to garnishment in the manner specified in this notice.)

You have the right to object to the proposed garnishment increase and to a hearing on your objection.

You may object for reasons concerning the existence, amount, and enforceability of the debt.

You may also object that having amounts equal to 15% of your disposable pay withheld from your disposable pay or making voluntary payments in that amount, would cause financial hardship for you and your dependents.

You must make a hearing request in writing, and send it to ED at the address on the enclosed Request for Hearing (RFH) form. If your request is postmarked or received by us within 30 calendar days of the date of this notice, we will not garnish until we have completed the requested hearing. If your request for hearing is postmarked (if mailed) or received (if not mailed) after that date, we will still conduct a hearing but we will not delay this garnishment unless you demonstrate to us that the delay was caused by factors over which you had no control. If we find that the debt is not owed as stated or not enforceable at this time, we will refund payments as needed.

Make your objection by checking the appropriate area on the RFH form. You may request that your hearing be conducted as an oral hearing or written records hearing. Any hearing will include a review of your written statements in the RFH, any records you submit with the RFH, and relevant records ED holds on your debt. In or with your Request for Hearing you must present all your objections and submit the evidence that supports them. However, you may submit your objections and evidence later if --

You request an oral hearing, or

You timely request a written hearing and also request access to your debt records, or

You request, and we agree to, an extension for submitting objections and evidence.

In our response to your request(s), we will explain the deadline that applies to your situation; that deadline will be at least 7 business days after our response.

Compliance with a repayment agreement will prevent garnishment. To do so, you must make a written agreement with us to repay this debt in monthly installments equal to 15% of your disposable pay per month, and make the first payment by the deadline noted above. If you believe you cannot afford that amount, **contact Customer Service** at

Collection Agency
(999) 999-9999

Repayment under a satisfactory repayment agreement can restore eligibility for Federal aid and restore deferment and other benefits previously available on loans. For information, contact Customer Service.

We will cancel garnishment action if we receive payment in full at

U.S. Department of Education
National Payment Center
P.O. Box 4169
Greenville, Texas 75403-4169

Make all payment instruments payable to the "U.S. Department of Education" and include your name and Social Security Number on the face of the payment instrument.

We will not garnish now if you prove that you have been employed at your current employer for less than 12 months and were involuntarily separated from your most recent previous employment. To object on this ground, check that box on the RFH and provide proof described there.

Your employer may not discharge you from employment nor take disciplinary action against you, as a result of an Order for Withholding nor can a prospective employer refuse to employ you as a result of this proposed action or existence of an Order for Withholding. If an employer takes any of these actions, you may sue that employer in a state or federal court for reinstatement, back pay, attorney's fees, and punitive damages. Our determination on your objections affects only the debt(s) described in this notice of garnishment, and is totally separate from any notice of proposed Federal payment offset or garnishment which you may have received from a Guarantee Agency. If you received a notice of collection action from a Guarantee Agency, you must present any objections to collection action to that agency.

Enclosures: Request for Hearing Form (RFH)
Financial Disclosure Form

Customer Service Number: 1-800-621-3115

Appendix F T08 Notice to Increase All 10% Garnishment Order to 15%

Debtor's Name
Debtor's Home Address
City, ST Zip Code+4

Re: Debt No.
Debt No.
Debt No.

Balance \$\$\$\$\$\$.cc

Response Deadline: mm/dd/yy

Notice of Proposed Wage Garnishment **Due to Debt Owed to U.S. Government**

The U.S. Department of Education (ED) intends to order your employer to withhold **15%** of your disposable pay to satisfy your defaulted loan or grant obligation(s) listed above. Disposable pay is pay less health insurance premiums and amounts required by law to be withheld (e.g., Social Security, Federal and State taxes). The legal basis for this action is Section 31001(o) of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321-358 (Apr. 26, 1996), Codified at 31 U.S.C. 3720D. The balance stated above includes, for loan debts, the principal loaned and any capitalized interest; for grant debts, the amount of overpayment; for all debts, accrued interest and fees, less any payments, refunds, or offsets received. We apply any payments we recover first to defray our collection costs (currently 25% of the amount of unpaid principal and interest), next to interest; last to principal. This notice explains your right to object to this action; read this entire notice for an explanation of your rights and how to use them.

ED has already ordered your employer to withhold wages at a rate of 10% or less of your disposable pay to collect this debt. That order is now in effect. You have the right to object to garnishment at the rate of 15%, and to have a hearing on your objection.

If you do not timely exercise your rights in the way described below or you do not make a repayment agreement or you later fail to make the payments required, ED will order your employer to withhold and send to ED 15% of your disposable pay each pay period until the balance, with accruing interest and collection costs, is paid in full. (Note: the amount actually withheld to pay this debt may be less than 15% of disposable pay, depending on your income and other claims against you.)

You have the following rights regarding this action:

You have the right to inspect and copy ED records relating to your debt. Request ED records through the Customer Service number below. (A request for records will not delay garnishment action unless you have timely objected to garnishment in the manner specified in this notice.)

You have the right to object to the proposed garnishment increase and to a hearing on your objection.

You may object for reasons concerning the existence, amount, and enforceability of the debt.

You may also object that having amounts equal to 15% of your disposable pay withheld from your disposable pay or making voluntary payments in that amount, would cause financial hardship for you and your dependents.

You must make a hearing request in writing, and send it to ED at the address on the enclosed Request for Hearing (RFH) form. If your request is postmarked or received by us within 30 calendar days of the date of this notice, we will not garnish until we have completed the requested hearing. If your request for hearing is postmarked (if mailed) or received (if not mailed) after that date, we will still conduct a hearing but we will not delay this garnishment unless you demonstrate to us that the delay was caused by factors over which you

had no control. If we find that the debt is not owed as stated or not enforceable at this time, we will refund payments as needed.

Make your objection by checking the appropriate area on the RFH form. You may request that your hearing be conducted as an oral hearing or written records hearing. Any hearing will include a review of your written statements in the RFH, any records you submit with the RFH, and relevant records ED holds on your debt.

In or with your Request for Hearing you must present all your objections and submit the evidence that supports them. However, you may submit your objections and evidence later if --

You request an oral hearing, or

You timely request a written hearing and also request access to your debt records, or

You request, and we agree to, an extension for submitting objections and evidence.

In our response to your request(s), we will explain the deadline that applies to your situation; that deadline will be at least 7 business days after our response.

Compliance with a repayment agreement will prevent garnishment. To do so, you must make a written agreement with us to repay this debt in monthly installments equal to 15% of your disposable pay per month, and make the first payment by the deadline noted above. If you believe you cannot afford that amount, **contact Customer Service** at

Collection Agency
(999) 999-9999

Repayment under a satisfactory repayment agreement can restore eligibility for Federal aid and restore deferment and other benefits previously available on loans. For information, contact Customer Service.

We will cancel garnishment action if we receive payment in full at

U.S. Department of Education
National Payment Center
P.O. Box 4169
Greenville, Texas 75403-4169

Make all payment instruments payable to the "U.S. Department of Education" and include your name and Social Security Number on the face of the payment instrument.

We will not garnish now if you prove that you have been employed at your current employer for less than 12 months and were involuntarily separated from your most recent previous employment. To object on this ground, check that box on the RFH and provide proof described there.

Your employer may not discharge you from employment nor take disciplinary action against you, as a result of an Order for Withholding nor can a prospective employer refuse to employ you as a result of this proposed action or existence of an Order for Withholding. If an employer takes any of these actions, you may sue that employer in a state or federal court for reinstatement, back pay, attorney's fees, and punitive damages. Our determination on your objections affects only the debt(s) described in this notice of garnishment, and is totally separate from any notice of proposed Federal payment offset or garnishment which you may have received from a Guarantee Agency. If you received a notice of collection action from a Guarantee Agency, you must present any objections to collection action to that agency.

Enclosures: Request for Hearing Form (RFH)
Financial Disclosure Form

Customer Service Number: 1-800-621-3115

Appendix G Pre-Hearing PCA Cover Letter and Repayment Agreement

[Specimen text]

PCA Cover Letter for Pre-Hearing Repayment Agreement

<PCA Letter Head>

This notice, regarding your account with the U.S. Department of Education, is from <PCA etc. >. The Department has placed your account with us for collection.

You have indicated that you wish to avoid garnishment of X% of your disposable pay by making a voluntary arrangement with the Department to repay your defaulted student loan(s) or grant obligation(s) described in the notice of garnishment recently sent to you. The balance of your obligation as of the date of this letter is noted above. The principal portion of that balance will continue to accrue interest. The Department will apply part of your payments to defray costs incurred to collect this obligation.

Enclosed is a proposed Repayment Agreement with the Department that the Department has asked us to send to you. The current garnishment process will be stopped, if, within 10 business days of the date of this letter, you take two steps:

1. You sign and return that Agreement to the Department at <PCA address>, and
2. You send to installment payment amount shown on the enclosed Agreement, to the following address: <NPC Address>.

If both actions are not taken within this deadline, the process, including the provision of any hearing you may have requested and a decision on your objection(s), will continue.

Our business hours are: Monday-Thursday 8am-9pm, Friday 8am-5pm and Saturday 8am-12pm (CST). Our phone number is 1 888 XXX-XXXX.

This communication is from a debt collector attempting to collect a debt and any information obtained will be used for that purpose.

**** Please See The Reverse Side Of This Letter For Important Information****

Pre- Hearing Repayment Agreement with the U.S. Department of Education

Note: Read this entire agreement before signing. Retain a copy for your records. Return a signed copy to the address shown on the letter that accompanies this Agreement.

I agree with the U.S. Department of Education that I will repay my obligation to the Department in monthly installments of **<MONTH-PAY>**.

My first payment in the amount of: \$**<MONTH-PAY>**. is due **<DUE-DATE>**.

Each monthly payment after that is due by the **<DUE-DATE>** day of each month.

All payments must be forwarded to --

U.S. Department of Education
National Payment Center
P.O. Box 4169
Greenville, TX 75403-4169

I understand that this installment amount of \$**<MONTH-PAY>** applies for the next 6 months. After 6 months, I agree to provide current financial information if the Department requests it. My required installment payment may change based on that information. I agree to pay the installment amount as it may be adjusted by the Department. I agree that failure to provide financial information is a breach of this agreement.

I have been given an opportunity for a hearing to object to garnishment. I now withdraw any request for a hearing that I have filed.

I agree that if I do not honor this agreement, the Department can start garnishing my pay at the rate of 15% of my disposable pay or the installment payment amount then in effect, whichever is less, without giving me further notice or any new opportunity for a hearing before that garnishment starts. I understand that if the Department starts garnishing my wages in the future, I can then object to garnishment, and the Department will give me a hearing on my objection(s).

I agree that --

- The Department will give me a hearing on objections I make in the future, but it will not delay or suspend garnishment while it hears and makes a decision on my objections;
- I can object in the future that garnishment would cause financial hardship to me and my dependents;
- I owe the amount stated in the Notice of Proposed Garnishment I have just been sent, and I waive any future objection that I do not owe that amount;
- I can object to garnishment for reasons that arise after the date of this agreement, and
- I can also object to garnishment if I believe that I am entitled to have this debt discharged or that I am protected by law from garnishment.

Signature: _____ Date: _____

[Sign and return this agreement to the **[address indicated below]**. Keep a copy for your records.]

Return Signed Agreement to: U.S. Department of Education
C/O: PCA Address

Appendix H Post Hearing PCA Cover Letter and Repayment Agreement
[Specimen text]

PCA Cover Letter for Post Hearing Repayment Agreement

<PCA Letter Head>

This notice, regarding your account with the U.S. Department of Education, is from **<PCA etc. >**. The Department has placed your account with us for collection.

You have indicated that you wish to avoid garnishment of X% of your disposable pay by making a voluntary arrangement with the Department to repay your defaulted student loan(s) or grant obligation(s) described in the notice of garnishment recently sent to you. The balance of your obligation as of the date of this letter is noted above. The principal portion of that balance will continue to accrue interest. The Department will apply part of your payments to defray costs incurred to collect this obligation.

Enclosed is a proposed Repayment Agreement with the Department that the Department has asked us to send to you. The current garnishment process will be stopped, if, within 10 business days of the date of this letter, you take two steps:

1. You sign and return that Agreement to the Department **<PCA address>**, and
2. You send to installment payment amount shown on the enclosed Agreement, to the following address: **<NPC Address>**.

If both actions are not taken within this deadline, the garnishment process will continue.

Our business hours are: Monday-Thursday 8am-9pm, Friday 8am-5pm and Saturday 8am-12pm (CST). Our phone number is 1 888 XXX-XXXX.

This communication is from a debt collector attempting to collect a debt and any information obtained will be used for that purpose.

**** Please See the Reverse Side of This Letter for Important Information ****

Post Hearing Repayment Agreement with the U.S. Department of Education

Note: Read this entire agreement before signing. Retain a copy for your records. Return a signed copy to the address shown at the bottom of this Agreement.

I agree with the U.S. Department of Education that I will repay my obligation to the Department in monthly installments of **<MONTH-PAY>**.

My first payment in the amount of: \$**<MONTH-PAY>**. Is due **<DUE-DATE>**.

Each monthly payment after that is due by the **<DUE-DATE>** day of each month.

All payments must be forwarded to --

U.S. Department of Education
National Payment Center
P.O. Box 4169
Greenville, TX 75403-4169

I understand that this installment amount of \$**<MONTH-PAY>** applies for the next 6 months. After 6 months, I agree to provide current financial information if the Department requests it. My required installment payment may change based on that information. I agree to pay the installment amount as it may be adjusted by the Department. I agree that failure to provide financial information is a breach of this agreement.

I have objected to garnishment, and I have received a decision from the Department on my objections.

I agree that if I do not honor this agreement, the Department can start garnishing my pay at the rate of 15% of my disposable pay or the installment payment amount then in effect, whichever is less, without giving me further notice or any new opportunity for a hearing before that garnishment starts. I understand that if the Department starts garnishing my wages in the future, I can then request a hearing or reconsideration of my objection(s) to garnishment.

I agree that --

- The Department will consider any request for hearing or reconsideration I make in the future, but it will not delay or suspend garnishment while it does so;
- I can object in the future that garnishment would cause financial hardship to me and my dependents;
- I owe the amount stated in the decision on my objection(s) to garnishment.
- I can object to garnishment for reasons that arise after the date of this agreement, and
- I can also object to garnishment if I believe that I am entitled to have this debt discharged or that I am protected by law from garnishment.

Signature: _____ Date: _____

[Sign and return this agreement to the **[address indicated below]**. Keep a copy for your records.]

Return Signed Agreement to: U.S. Department of Education
C/O: PCA Address

Appendix I Garnishment Order



**FEDERAL
STUDENT
AID**

UNITED STATES DEPARTMENT OF EDUCATION
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303

PHONE NUMBER: 404-562-6012 FAX NUMBER: 404-562-6110

March 3, 2003

Employer Name
Attention
Employer Address 1
Employer Address 2
Employer City, Employer St Zip

Letter to Employer & Important Notice to Employer

Dear Employer,

One of your employees has been identified as owing a delinquent nontax debt to the United States. The Debt Collection Improvement Act of 1996 (DCIA), permits Federal agencies to garnish the pay of individuals who owe such debt without first obtaining a court order. Enclosed is a Wage Garnishment Order, directing you to withhold a portion of the employee's pay each pay period and to forward those amounts to us. We have previously notified the employee that this action was going to take place and provided the employee with the opportunity to dispute the debt.

As both a businessperson and a taxpayer you can understand and appreciate the importance of ensuring that duly owed debts do not go unpaid. Your cooperation in complying with the enclosed Wage Garnishment Order will assist in our efforts to collect the billions of dollars in delinquent nontax debt owed to the United States. A Wage Garnishment Worksheet is enclosed to assist you in determining the proper amount to withhold.

Please read the enclosed documents carefully. They contain information concerning your responsibilities to comply with this order if you have any questions, please call the contact name listed on the Order.

Thank you for your cooperation.

See enclosed: **Important Notice to Employer.**

**Enclosures: Wage Garnishment Order (SF-329B)
 Wage Garnishment Worksheet (SF-329C)
 Employer Certification (ED-329D)**

Important Notice to Employer

Federal Law (31 U.S.C. 3720D, 31 C.F.R. 285.11) Provides:

Federal Law supersedes State Law. Federal Law applies to wage garnishment pursuant to the Wage Garnishment Order notwithstanding State Law.

Disposable pay. For purposes of Wage Garnishment Order, “disposable pay” means the employee’s compensation (including, but not limited to, salary, overtime, bonuses, commissions, sick leave and vacation pay) from an employer after the deduction of health insurance premiums and any amounts required by law to be withheld. Proper deductions include Federal, State, and Local taxes, State unemployment and disability taxes, social security taxes, and involuntary pension contributions, but do not include voluntary pension or retirement plan contributions, union dues, or amounts withheld pursuant to a court order, and the like. A Wage Garnishment Worksheet is included with the Wage Garnishment Order to assist the employer in calculating disposable pay and the wage garnishment amount.

Multiple Withholding Orders. If in addition to the Wage Garnishment Order you, as employer, are served with other withholding orders pertaining to the same employee, then you may withhold sufficient amounts to satisfy the multiple withholding orders simultaneously, up to the maximum amount of **25%**. The Wage Garnishment Order should be paid before garnishment or withholding order that you receive after you receive this one, **Except** that family support orders always should be paid first. Upon termination of the family support or prior withholding order(s), the amount withheld for the Wage garnishment Order shall be increased to the amount stated in Section 2 of the Wage Garnishment Order.

Pay cycles. An employer is not required to vary its normal pay and disbursement cycles to comply with the Wage Garnishment Order.

Failure to Comply. An employer who fails to comply with the Wage Garnishment order shall be liable for any amounts that the employer fails to withhold under the Wage Garnishment Order, plus Attorney’s Fees and costs incurred by the creditor agency to enforce the Wage Garnishment Order. In addition, the employer who fails to comply with the Wage Garnishment Order may be liable for punitive damages as determined by a court of competent jurisdiction.

No Retaliation. An individual may sue any employer who discharges from employment, refuses to employ, or takes disciplinary action against an individual subject to a Wage Garnishment Order by reason of the fact that the Individual’s wages have been subject to garnishment under 31 U.S.C. 3720D. A court of competent jurisdiction shall award Attorney’s Fees to a prevailing employee, and, in its discretion, may order reinstatement of the individual, award punitive damages and back pay to the employee, or order such other remedy as may be reasonably necessary.

Standard Form 329A(11-98)

UNITED STATES GOVERNMENT
WAGE GARNISHMENT ORDER (SF-329B)

1. Date of this Order: Insert Date	2. Date Mailed to Employer: Insert Date	Credit Agency Tracking No. (Refer to this number in all correspondence): Insert SSN
--	---	---

RE:	4. Employee Name Insert Borrower's Name	5. Employee Social Security No: Insert Borrower's SSN
------------	---	---

TO:	6. Employer: Insert Employer Name	7. Employer Mailing Address (include street address, p. o. box, suite no., city, state, zip code): Employer Address 1 Employer Address 2 Emp. City, Emp. St, Emp. Zip
------------	---	---

FROM:	8. Creditor Agency United States Department of Education	9. Creditor Agency Mailing Address (include street address, city, state, zip code): National Payment Center P.O. Box 4142 Greenville, TX 75403
	10. Contact Name: Lynda Gaddy	11. Telephone No.: 404-562-6012
	12. Internet e-mail address: AWG@ED.GOV	13. FAX No.: 404-562-6110

14. Amount Due: \$ Insert Balance Due	15. As of (Month/Day/Year): Insert Date
--	---

Note: The amount due may be increased as a result of additional interest, penalties, and other costs being assessed by the creditor Agency.

Section 1. ORDER. YOU, the Employer, are hereby ORDERED to deduct from all disposable pay paid by you to the Employee the Wage Garnishment Amount described in Section 2 of this Order. You are ordered to begin deductions on the first payday after you receive this Order. If the first payday is within 10 days after you receive this Order, you may begin deductions on the second payday after you receive this Order. You are ordered to continue deductions until you receive notification from the Creditor Agency to suspend or discontinue deductions. You are further ORDERED to pay the Creditor Agency all Wage Garnishment Amounts deducted by you under this order within three (3) business days of the withholding. Employers are encouraged to make payments electronically, if possible as follows:

Standard Form 329B (11-98)
Prescribed by 31 CFR 285.11

16. ABA Routing No.:	17. Account No.:	18. Agency Location Code (ALC) No.:
19. Account Title:	20. Other information required (i.e., tracking no., debtor name, etc.): Debtor Name: SSN:	

Otherwise, mail checks (postmarked within 3 business days of the withholding) to:

21. Mailing address for check payments: U.S. Department of Education
 National Payment Center
 P.O. Box # 4142
 Greenville, TX 75403

Section 2. WAGE GARNISHMENT AMOUNT.

The Wage Garnishment Amount is \$ _____ per pay period in accordance with an agreement between the Creditor Agency and the Employee.

-OR-

(b) The Wage Garnishment Amount for each pay period is the lesser of:

_____ % of the Employee's disposal pay (not to exceed 15%);

the garnishment amount set forth in 15 U.S.C. 1673(a)(2) (the amount by which the employee's disposable pay exceeds an amount equivalent to 30times the minimum wage); or

25% of the Employee's disposable pay less the amounts withheld under the withholding orders with priority. A withholding order with priority is valid, legally enforceable withholding order that either (1) was received by the Employer prior to this Order, or (2) is an order for family support regardless of date received. Upon termination of a withholding order with priority or upon receipt of an order for family support subsequent to the receipt of this Order, the amount withheld for this order shall be recalculated based on the formula described in this Section 2 (b).

***Note:* The Employer may use the enclosed Wage Garnishment Worksheet to calculate the Wage Garnishment Amount.**

CREDITOR AGENCY CERTIFICATION. The CREDITOR AGENCY hereby certifies that this order is issued in accordance with the requirements of 31 U.S.C. § 3720D and 31 C.F.R. § 285.11 and is mailed to the Employer on the date shown above.

 CREDITOR AGENCY SIGNATURE

Print Name: John R. Doe

Title: Senior Loan Analyst

Standard Form 329B (11-98)
 Prescribed by 31 CFR 285.11

WAGE GARNISHMENT WORKSHEET (SF-329C)

Notice to Employers: The Employer may use a copy of this worksheet each pay period to calculate the Wage Garnishment Amount to be deducted from a debtor's disposable pay. Disposable pay includes, but is not limited to, salary, overtime, bonuses, commissions, sick leave and vacation pay. If section 2(a) of the Wage Garnishment Order specifies the dollar amount to be garnished, the employer does not need to complete this worksheet.

Debtor's Name: _____

Social Security Number: _____

Pay Period Frequency (Select One):

***Weekly or less *Every other week *Two times per month *Monthly *Other (Specify: _____**

DISPOSABLE PAY COMPUTATION

1 Gross Amount Paid to Employee		
2 Amount Withheld		
a. Federal Income Tax:		
b. F. I. C. A. (Social Security)		
c. Medicare		
d. State Tax (including: income tax, unemployment, disability)		
e. City/Local tax		
f. Health Insurance Premiums		
g. Involuntary Retirement or Pension Plan Payments		
3 Total Allowable Deductions (add lines a - g)		
4 DISPOSABLE PAY (Subtract Line 3 from Line 1)		

WAGE GARNISHMENT AMOUNT COMPUTATION

If the Employee's wages are not subject to any withholding orders with priority, skip to line 8.

5	25% of Disposable Pay (Multiply Line 4 by .25)													
6	Total Amount Withheld Under Other Wage Withholding Orders with Priority. See section 2(b) of the Order.													
7	Subtract line 6 from line 5 (If line 6 is more than line 5 , enter zero)													
8	Multiply the percentage from section 2(b)(1) of the Order by Line 4. (The percentage from section 2(b)(1) of the Order may not exceed 15%). <u>Example:</u> If the percentage from section 2(b)(1) of the Order is 15%, multiply .15 by line 4.													
9	Amount equivalent to 30 times the Federal Minimum Wage (\$5.15) <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;"><u>If the employee is paid</u></td> <td style="width: 33%;"><u>Line 9 is</u></td> <td style="width: 33%;"><u>If the employee is paid</u></td> <td style="width: 33%;"><u>Line 9 is</u></td> </tr> <tr> <td>weekly or less</td> <td>154.50</td> <td>2x per month</td> <td>334.75</td> </tr> <tr> <td>Every other week</td> <td>309.00</td> <td>Monthly</td> <td>669.50</td> </tr> </table>		<u>If the employee is paid</u>	<u>Line 9 is</u>	<u>If the employee is paid</u>	<u>Line 9 is</u>	weekly or less	154.50	2x per month	334.75	Every other week	309.00	Monthly	669.50
<u>If the employee is paid</u>	<u>Line 9 is</u>	<u>If the employee is paid</u>	<u>Line 9 is</u>											
weekly or less	154.50	2x per month	334.75											
Every other week	309.00	Monthly	669.50											
10	Subtract line 9 from line4 (If line 9 is more than line 4 , enter zero)													
11	WAGE GARNISHMENT AMOUNT LINE 7, 8, OR 10, WHICHEVER AMOUNT IS SMALLEST													

Standard Form 329C(11-98)
Prescribed by 31 CFR 285.11

EMPLOYER CERTIFICATION (ED-329D)

NOTICE TO EMPLOYERS: THE EMPLOYER MUST COMPLETE AND RETURN THIS
CERTIFICATION TO THE CREDITOR AGENCY WITHIN 20 DAYS OF RECEIPT.

TO BE COMPLETED BY CREDITOR AGENCY:

Date of this Order: Insert Date	Date Mailed to Employer: Insert Date	Credit Agency Tracking No. (Refer to this number in all correspondence): Insert SSN
---	--	---

Creditor Agency: United States Department of Education	Creditor Agency Mailing Address (include street address, city, state, zip code): National Payment Center P.O. Box 4142 Greenville, TX 75403
--	--

Employee Name Insert Borrower's Name	Employee Social Security No: Insert Borrower's SSN
--	--

The remainder of the Employer Certification is to be completed by Employer:

Employer:	Employer Taxpayer Identifying Number:
Employer Address (for future correspondence on this matter):	Employer Contact Person:

Employer Telephone No.:	Employer Fax No.:	Employer E-mail Address:
--------------------------------	--------------------------	---------------------------------

Note: the employer Taxpayer Identifying Number, required by 31 U.S.C. 7701 (c), will be used to collect and report any delinquent amounts owed by the Employer under this Order.

The Employer received the Wage Garnishment Order concerning the above named employee on _____ (Date).
Check one of the following:

_____ The above named Employee is currently employed with this Employer, or
_____ The above named Employee is no longer employed by this employer.

Please provide the following information for employees no longer employed:

Employment Termination Date:	Employee's Last Known Address and Telephone No. (if, Known):	Employee's Current Employer (if Known):
-------------------------------------	---	--

ED FORM 329D (Rev. 7-02)
Prescribed by 31 FR 285.11

Note: If the Employee is no longer employed with this Employer, the Employer does not need to complete the rest of this Certification. Sign and date this certification on page 2 and return to the Creditor Agency.

1. Please provide the following information for the current pay period only. Or, you may attached a copy of a completed Wage Garnishment Worksheet to this Certification.

Gross Amount paid to Employee (indicate whether hourly, weekly, annually, etc.): \$ _____	Wage Garnishment Amount: \$ _____
--	--------------------------------------

Pay Interval (Select One):	
<input type="checkbox"/> Weekly or less	<input type="checkbox"/> Monthly
<input type="checkbox"/> Every other Week	<input type="checkbox"/> Other (Specify: _____)
<input type="checkbox"/> Two Times per month	

2. *If the Employee's wages are subject to withholding orders with priority, please complete the following:*

A withholding order with priority is one received by the Employer prior to this Order or an order for family support received at any time. Upon termination of the family support or prior withholding order, the amount withheld for this Order shall be increased.

List All Withholding Order With Priority	Date Served On Employer	Approx. Date Withholding Expected To End (if known)

The person signing below hereby certifies that he or she is duly authorized representative of the Employer, and that the above information is accurate to the best of his or her knowledge and belief.

Signature of Employer Representative

Date

Print Name: _____

Title: _____

Telephone No.: _____

ED FORM 329D (Rev. 7-02)
Prescribed by 31 FR 285.11

Appendix J Cover Letter for Transitional Garnishment Order from 10% to 15%



**FEDERAL
STUDENT
AID**

**UNITED STATES DEPARTMENT OF EDUCATION
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303
PHONE NUMBER: 404-562-6012 FAX NUMBER: 404-562-6110**

March 3, 2003

Employer Name
Attention
Employer Address 1
Employer Address 2
Employer City, Employer St Zip

Letter to Employer & Important Notice to Employer

Dear Employer,

The Department of Education had previously identified one of your employees as owing a delinquent nontax debt to the United States. The Department issued a Wage Garnishment Order to you that directed you to withhold a portion of the employee's pay and to forward that amount to us. That Order was issued under the authority of section 488A of the Higher Education Act. The Debt Collection Improvement Act of 1996 (DCIA) provides this same authority to Federal agencies to garnish the pay of individuals who owe such debt without first obtaining a court order. The DCIA, however, authorizes the withholding of up to 15% of the debtor's disposable pay; the HEA authorized withholding no more than 10% of disposable pay.

The Department now issues a Wage Garnishment Order under authority of the DCIA that supersedes the order previously issued to you for this individual. The enclosed Wage Garnishment Order directs you to withhold a portion of the employee's pay each pay period, which may be up to 15% of disposable pay, and to forward those amounts to us. We have already notified the employee that this new action was going to take place, provided the employee with the opportunity to object to this action, and issued a decision on any objection raised by the individual to this action.

Note that for purposes of DCIA garnishment, health insurance premiums as well as amounts required by law to be withheld are excluded from "disposable pay." A Wage Garnishment Worksheet is enclosed to assist you in determining the proper amount to withhold.

Please read the enclosed documents carefully. They contain information concerning your responsibilities to comply with this order if you have any questions, please call the contact name listed on the Order.

Thank you for your cooperation.

See enclosed: **Important Notice to Employer.**

**Enclosures: Wage Garnishment Order (SF-329B)
Wage Garnishment Worksheet (SF-329C)
Employer Certification (ED-329D)**

Appendix K Change Order



**FEDERAL
STUDENT
AID**

UNITED STATES DEPARTMENT OF EDUCATION
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303
PHONE NUMBER: 404-562-6012 FAX NUMBER: 404-562-611

January 18, 2005

«EmployerName»
Attention: «Attention»
«EmployerAddr1»
«EmployerAddr2»
«EmployerCity», «EmployerState» «EmployerZip»

Change Order

Dear Employer,

We have previously notified you to withhold 15% of the disposable pay of one of your employees to satisfy a delinquent nontax debt owed to the United States. The Debt Collection Improvement Act of 1996 (DCIA) permits Federal agencies to garnish the pay of individuals who owe such debt without first obtaining a court order. Please disregard that prior Order. Enclosed is a new Wage Garnishment Order directing you to withhold a fixed dollar amount from this employee's pay each pay period and to forward those amounts to us. After reviewing information provided by the employee, we have determined that the fixed dollar amount shown on the enclosed Order should be withheld each pay period, instead of the 15% as previously ordered.

As both a businessperson and a taxpayer you can understand and appreciate the importance of ensuring that duly owed debts do not go unpaid. Your cooperation in complying with the enclosed Wage Garnishment Order will assist in our efforts to collect the billions of dollars in delinquent nontax debt owed to the United States.

If you have any questions, please call the contact name listed on the Order.

Thank you for your cooperation.

Enclosures: Wage Garnishment Order (SF-329B)

UNITED STATES GOVERNMENT
WAGE GARNISHMENT ORDER (SF-329B)

3. Date of this Order: January 18, 2005	4. Date Mailed to Employer: January 18, 2005	5. Credit Agency Tracking No. (Refer to number in all correspondence): «SSN»
---	--	--

RE:	4. Employee Name «DebtorName»	5. Employee Social Security No: «SSN»
------------	---	---

TO:	6. Employer: «EmployerName»	7. Employer Mailing Address (include street address, p. o. box, suite no., city, state, zip code): «EmployerAddr1» «EmployerAddr2» «EmployerCity», «EmployerState» «EmployerZip»
------------	---------------------------------------	--

FROM:	8. Creditor Agency United States Department of Education Federal Student Aid, Collections	9. Creditor Agency Mailing Address (include street address, city, state, zip code): National Payment Center P.O. Box 4142 Greenville, TX 75403
	10. Contact Name: DEBT COLLECTION SERVICE INFORMATION CENTER	11. Telephone No.: 1 – 800 – 621 - 3115
	12. Internet e-mail address:	13. FAX No.:

14. Amount Due: \$ «BalanceDue»	15. As of (Month/Day/Year): «AcctBalanceDate»
---	---

Note: The amount due may be increased as a result of additional interest, penalties, and other costs being assessed by the creditor Agency.

Section 1. ORDER. YOU, the Employer, are hereby ORDERED to deduct from all disposable pay paid by you to the Employee the Wage Garnishment Amount described in Section 2 of this Order. You are ordered to begin deductions on the first payday after you receive this Order. If the first payday is within 10 days after you receive this Order, you may begin deductions on the second payday after you receive this Order. You are ordered to continue deductions until you receive notification from the Creditor Agency to suspend or discontinue deductions. You are further ORDERED to pay the Creditor Agency all Wage Garnishment Amounts deducted by you under this order within three (3) business days of the withholding. Employers are encouraged to make payments electronically, if possible as follows:

Standard Form 329B (11-98)
Prescribed by 31 CFR 285.11

16. ABA Routing No.:	17. Account No.: «SSN»	18. Agency Location Code (ALC) No.:
19. Account Title:	20. Other information required (i.e., tracking no., debtor name, etc.): «DebtorName» «SSN»	

Otherwise, mail checks (postmarked within 3 business days of the withholding) to:

21. Mailing address for check payments:	U.S. Department of Education National Payment Center P.O. Box # 4142 Greenville, TX 75403
---	--

Section 2. WAGE GARNISHMENT AMOUNT.

- (a) The Wage Garnishment Amount is \$ «PerPayPeriodAmt» per pay period in accordance with an agreement between the Creditor Agency and the Employee.

-OR-

- (b) The Wage Garnishment Amount for each pay period is the lesser of:

- (1) «PerPayPeriodIntRate» % of the Employee's disposable pay (**not to exceed 15%**);
- (2) The garnishment amount set forth in 15 U.S.C. 1673(a)(2) (the amount by which the employee's disposable pay exceeds an amount equivalent to 30 times the minimum wage); or
- (3) 25% of the Employee's disposable pay less the amounts withheld under the withholding orders with priority. A withholding order with priority is valid, legally enforceable withholding order that either (1) was received by the Employer prior to this Order, or (2) is an order for family support regardless of date received. Upon termination of a withholding order with priority or upon receipt of an order for family support subsequent to the receipt of this Order, the amount withheld for this order shall be recalculated based on the formula described in this Section 2 (b).

Note: The Employer may use the enclosed Wage Garnishment Worksheet to calculate the Wage Garnishment Amount.

CREDITOR AGENCY CERTIFICATION: The CREDITOR AGENCY hereby certifies that this order is issued in accordance with the requirements of 31 U.S.C. § 3720D and 31 C.F.R. § 285.11 and is mailed to the Employer on the date shown above.

CREDITOR AGENCY SIGNATURE

Title: «ValidatorTitle»

Print Name: «ValidatorName»

Standard Form 329B (11-98)
Prescribed by 31 CFR 285.11

Appendix L Notice to Stop Wage Garnishment



**FEDERAL
STUDENT
AID**

**UNITED STATES DEPARTMENT OF EDUCATION
61 FORSYTH STREET, ROOM 19T89
ATLANTA, GA 30303
PHONE NUMBER: 404-562-6012 FAX NUMBER: 404-562-6110**

Employer Name
Attn: Payroll Office
Employer Address
City, State Zip+4

RE: Debtors' Name
SSN: 111-11-1111

**NOTICE OF CANCELLATION OF ORDER FOR
WITHHOLDING OF WAGES**

The Order for Withholding of Employee Wages issued by the U.S. Department of Education (ED) on the above date for the above referenced employee is cancelled. ED requests that you cease any further action to withhold or remit wages pursuant to this order.
If you have any questions please contact this office at (404) 562-6012.

Sincerely,

**Hearing Official
U.S. Department Of Education**

Fax Number:

Appendix M A91 Notice To Debtor - AWG Order Being Issued

«DebtorName»
«DebtorAddr1»
«DebtorAddr2»
«DebtorCity», «DebtorState» «DebtorZip»

SSN: «SSN»
Amount Due: \$«BalanceDue»

Final Notice Of Wage Garnishment For Debt Owed To U.S. Government

The Department of Education (ED) previously notified you that it intended to garnish your wages to collect a defaulted loan or grant obligation you owe. Our notice explained the rights you have, and the steps you must take, to avoid garnishment of your wages for this debt. You either did not respond to this notice, or failed to enter into, or to comply with, an agreement to repay this debt.

Therefore, ED now orders your employer to withhold a portion of your wages to satisfy this debt until the debt is paid in full. ED will order your employer to withhold each pay period an amount that is equal to the least of the following amounts: 15% of your disposable pay, to such lesser amount as a may have been determined by a Department hearing decision as warranted, or to the installment amount agreed to in a repayment agreement. The unpaid principal portion of the balance noted above will continue to accrue interest, and we will apply part of each payment to defray the collection costs we incur. Your employer will be required under federal law to comply with the order.

If you pay this debt in full, we will cancel wage garnishment action promptly. To pay in full, send payment in the amount shown as the total balance along with the upper portion of this notice to

U.S. Department of Education (ED)
C/O: National Payment Center (NPC)
P. O. Box 4169
Greenville, TX 75403.

The total balance shown includes the outstanding principal, interest accrued through the date of this notice, and the amount of collection costs we will incur for that payment, for which you are liable. Make all payment instruments payable to "U.S. Department of Education" and include your name and Social Security number on the face of the payment instrument.

You may still request a hearing to contest this garnishment, or, if you have already obtained a hearing on an objection, you may request reconsideration of that decision, as explained in the decision. However, we will not delay garnishment action. If we later determine that an adjustment or other relief is needed, we will take corrective action at that time. You may obtain a form Request for Hearing at the following website: <http://www.ed.gov/offices/OSFAP/DCS>, select Forms, then select "Administrative Wage Garnishment Request for Hearing," or by contacting:

CUSTOMER SERVICE: U. S. Department of Education 1-800-621-3115

Appendix N Cover Letter For Financial Disclosure Statement

Debtors' Name
Address

RE: Account Number

This is in response to your objection that withholding 15 percent of your disposable pay would cause you an extreme financial hardship. To prove this objection, you must present evidence of your family income and expenses. You have submitted little or no evidence to support your objection. The U.S. Department of Education (ED) will delay any decision on your objection for 15 days from the date of this letter to provide an opportunity for you to support your objection. After that date, ED will consider your objection and will issue a decision based on the information contained in ED files. ED may conclude that this debt is fully enforceable against you at this time at the rate of 10 percent withholding per pay period.

You can use the space below to describe your income and expenses. Claims of hardship not supported by documents showing the income and expenses claimed are not likely to be considered credible by the Department. It is to your advantage to be as accurate and clear as possible, and to explain fully any unusual expenses. You may attach additional pages if needed to document additional expenses or provide explanations.

Examples of the kind of documents needed to support your claim are listed below.

1. Copies of monthly bills should be provided for all expenses you include on this list.
2. Total income from all sources, including income of your spouse and dependents; should be evidenced by copies of last year's federal income tax return for you, your spouse, and your dependents.
3. The two most recent leave and earnings statements for you and your spouse and any regularly employed dependent should be included.

Do not include monthly payments on credit cards if the items purchased by that credit card fits under an expense category listed here. Include those costs under that expense category. For example: payments required on department store credit cards used to purchase clothing should be listed under clothing expenses.

If you are paying some expenses quarterly or annually, such as automobile insurance or property taxes, calculate the amount that would be due if these expenses were paid on a monthly basis and put that amount in the space provided.

To evaluate a hardship claim, ED compares the expenses you claim and support against averages spent for those expenses by families of the same size and income as yours. ED considers proven expenses as reasonable up to the amount of these averages. If you claim more for an expense than the average spent by families like yours, you must provide persuasive explanation why the amount you claim is necessary. These average amounts were determined by the IRS from different government studies. You can find the average **expense amount that the Department uses at this website:** <http://www.ed.gov/offices/OSFAP/DCS>, then select "Administrative Wage Garnishment," and then select "COLLECTION FINANCIAL STANDARDS."

Appendix O System Letters Used for Responding to Hearings

ED LTR CODE	Letter Meaning & Usage
TO3	AWG RFH FINANCIAL DISCLOSURE STATEMENT
T07	Notice to Resume / Re-Start Garnishment Procedures
T08	Notice to Increase 10 % Garnishment Payments to 15%
T09	Notice to Increase Reduced Garnishment Payments
T11	Transitional Notice to 15%
T12	New "S02" Revised Initial Notice of Intent to Garnish
U05	Revised Employment Verification Form
U62	Notice Requesting Proof of Bankruptcy Claim
U63	Notice Requesting Third Party Information
U64	Notice Requesting Proof of Balance Dispute
U65	Notice Requesting Debtor to Call to Schedule Hearing
U89	Notice Requesting Supporting Documentation from Debtor
V07	Post Hearing Repayment Request, Debtor Submitted Financial Data, No Hardship Proven, Debtor refuses to sign repayment Agreement - ED will garnish wages for Full 15%.
V08	Post Hearing Repayment Request, Debtor Submitted Financial Data - Partial hardship Proven, but refuses to sign repayment Agreement -debtor determine to be Partial Hardship - ED will garnish wages for Reduced Amount.
V11	Notice Setting Date & Time of Hearing
V13	Notice Confirming Debtor Request to Cancel Hearing
V14	PIF Notice for AWG Hearing Accounts
V15	Notice of Approval of Closed School Discharge
V16	Notice Canceling Garnishment Due to Death or Disability
V17	Notice of Cancellation of Garnishment Due to Active Bankruptcy
V18	Postponement Notice for Hearing
V19	Notice Approving 6 months suspension due to Hardship
V21	New Notice Granting Extension of Deadline for Submitting Documentation
V25	Denial of Request for Reconsideration Due to No Documentation being Submitted
V26	Denial of Request for Reconsideration Due to No Documentation being Submitted to Change Original Decision
V27	Reserved AWG RFH Code for WREID
X20	Repayment Agreement Notice for Full 15%
X21	Repayment Agreement Notice for Partial Payment
V30	No Financial Data Received, Request for Hearing Received - ED will provide Hearing
V31	No Financial Data Received, No Request for Hearing Received - ED will proceed to garnish wages.

V32	Debtor Refused Repayment Agreement, however, the debtor submitted a written RFH, ED will provide Debtor with Hearing.
V33	Debtor Refused Repayment Agreement, however, the debtor did not submitted a written RFH, ED will proceed to garnish wages.
V34	Debtor signed and returned Repayment Agreement Letter, but did not submit the required payment - ED will Garnish Wages for the agreed upon amount.
V35	Debtor signed and returned Repayment Agreement Letter, but did not submit the required payment - ED will give the Debtor an extension to submit payment or garnishment.
V36	Debtor submitted the Requested Payment Amount, but did not submit a signed repayment agreement, No written RFH was received, therefore ED will Garnish Wages.
V37	Debtor submitted the Requested Payment Amount, but did not submit a signed repayment agreement, Written RFH was received; therefore, ED will provide the Debtor with a hearing.
V38	Debtor did Not submitted the Requested Payment Amount, did not submit a signed repayment agreement, But did submit a Written RFH, therefore ED will provide the Debtor with a hearing.
V39	Extension letter to Debtors that submitted the Money, But did not Submit a Signed Repayment Agreement
V40	No Signed Repayment Agreement Received, No Dollars Received, No RFH submitted, ED will Garnish Wages No Hearing
V29	Post Hearing Request to Pay Voluntarily; However, the Debtor did not submit any Financial Data, ED will proceed with Garnishment.
V41	Post Hearing Request to Pay Voluntarily; Financial Data Submitted; However, the Debtor refuses sign a repayment agreement letter. ED will proceed with Garnishment.
V42	Extension Letter for Post Hearing, where a Signed Repayment Agreement letter has been Received, but no dollars. Warning Notice pay in 7 days or ED will garnished for the agreed amount
V43	Extension for Post Hearing Account, Where the Debtor has Submitted the Payment, But not the Signed Repayment Agreement. This is a warning notice giving the debtor 7 days to submit signed agreement or be garnished
V44	Post Hearing request to pay where no money has been received, no signed repayment agreement or Both. ED will garnish wages.

These letters were developed to help expedite some hearing, and maybe used when needed by the Hearing official, as needed.

The Language or Text of the V – series letters follows:

[V13 – *Cancel Request for AWG Hearing*]

This letter is in response to your request for a hearing on your objection to the garnishment of your wages to repay a debt held by the U.S. Department of Education (ED) in your name or associated with your social security number.

This letter is to acknowledge your request to cancel your Request for Hearing regarding the Administrative Wage Garnishment (AWG) for the above referenced debt. Please be advised that you still retain the right to request an AWG hearing or review of your objections in the future.

If you have any further questions you may contact the AWG Hearings branch at 404-562-6012 for clarification.

[V14 – *PIF letter for AWG Accounts*]

This letter is to advise you that the debt or debts listed above have been satisfied and the garnishment order cancelled. Any overpayments received on the account will be refunded to you within the next six to eight weeks.

Please retain this letter for your records as proof that the above-listed debt(s) have been resolved. If you have any further questions you may contact the AWG Hearings branch at 404-562-6012 for clarification.

[V15 – *Closed School Discharges, ATB, Unpaid School Refund, Unauthorized Signature, or Dischargeable Bankruptcy*]

This letter is to advise you that based upon a review of the documentation provided, the garnishment order has been cancelled or will not

be issued and the case has been closed. The debt held by ED has been determined to be dischargeable; therefore, any over payments received on the debt will be refunded to you within the next six to eight weeks.

Please retain this letter for your records as proof that the above listed debt(s) have been resolved. If you have any further questions you may contact the AWG Hearings branch at 404-562-6012 for clarification.

[V16 – *Death and Disability Approved Claims*]

The garnishment action was objected to the basis that the debtor is totally and permanently disabled or died. This letter is to advise you that based upon the information provided, the debt held by ED has been closed conditionally and the garnishment order cancelled. You will be notified in the future of the final determination in this matter.

Please retain this letter for your records as proof that the garnishment order on the above-listed debt(s) has been cancelled. If you have any further questions you may contact the AWG Hearings branch at 404-562-6012 for clarification.

[V17 – *Active Bankruptcy*]

The garnishment action was objected to on the basis that the debtor is now in bankruptcy and protected by the automatic stay. This letter is to advise you that based upon the information provided, collection of the debt(s) held by ED has been suspended and the garnishment order cancelled pending receipt of notice that the bankruptcy has been closed. You will be notified in the future of the final determination in this matter.

Please retain this letter for your records as proof that the garnishment order on the above listed debt(s) has been suspended. If you have any further questions, you may contact the AWG Hearings branch at 404-562-6012 for clarification.

Appendix P Final Regulations Implementing DCIA Garnishment

Authority

[Federal Register: February 19, 2003 (Volume 68, Number 33)]

[Rules and Regulations] [Page 8141-8152]

From the Federal Register Online via GPO Access
[waiss.access.gpo.gov]

[DOCID:fr19fe03-26] [[Page 8141]]

Part IV

Department of Education

34 CFR Part 34

Administrative Wage Garnishment; Final Rule

[[Page 8142]]

DEPARTMENT OF EDUCATION

34 CFR Part 34

Administrative Wage Garnishment

AGENCY: Office of the Chief Financial Officer,
Department of Education.

ACTION: Final regulations.

SUMMARY: These regulations implement for the Department of Education the provisions for administrative wage garnishment in the Debt Collection Improvement Act of 1996 (DCIA). The DCIA authorizes Federal agencies to garnish administratively, that is, without court order, the disposable pay of an individual who is not a Federal employee to collect a delinquent nontax debt owed to the United States. These regulations implement this authority for a debt owed to the United States under a program administered by the Department of Education.

DATES: These regulations are effective March 21, 2003.

FOR FURTHER INFORMATION CONTACT: Marian E. Currie, U.S. Department of Education, Union Center Plaza Room 41B4, 830 First Street NE, Washington DC 20202, Telephone: (202) 377-3212 or via Internet:

marian.currie@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under

FOR FURTHER INFORMATION CONTACT.

SUPPLEMENTARY INFORMATION: On April 12, 2002, the Secretary published in the Federal Register a notice of proposed rulemaking (NPRM) (67 FR 18072) for implementation of the wage garnishment authority in the DCIA. This document contains the final regulations for the rules that were proposed in that NPRM. These final regulations contain a few changes from the NPRM.

Analysis of Comments and Changes

In response to the NPRM, we received comments from two parties. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix at the end of these final regulations.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Although a substantial number of small entities will be subject to these regulations and to the certification requirement in these regulations, as explained in the NPRM, the requirements will not have a significant economic impact on these entities.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the Federal Register, in text or Adobe Portable Document Format (PDF) on the Internet at the following site:

<http://www.ed.gov/legislation/FedRegister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

You may also view this document in PDF at the following site: <http://ifap.ed.gov>.

Note: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available

on GPO Access at:

<http://www.access.gpo.gov/nara/index.html>

(Catalog of Federal Domestic Assistance Number does not apply.)

list of Subjects in 34 CFR Part 34

Administrative practice and procedure, Claims, Debts, Garnishment of wages, Hearing and appeal procedures, Salaries, Wages.

Dated: February 12, 2003.

Rod Paige,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by adding a new part 34 to read as follows:

PART 34-- ADMINISTRATIVE WAGE GARNISHMENT

Sec.

34.1 Purpose of this part.

34.2 Scope of this part.

34.3 Definitions.

34.4 Notice of proposed garnishment.

34.5 Contents of a notice of proposed garnishment.

34.6 Rights in connection with garnishment.

34.7 Consideration of objection to the rate or amount of withholding.

34.8 Providing a hearing.

34.9 Conditions for an oral hearing.

34.10 Conditions for a paper hearing.

34.11 Timely request for a hearing.

34.12 Request for reconsideration.

34.13 Conduct of a hearing.

34.14 Burden of proof.

34.15 Consequences of failure to appear for an oral hearing.

34.16 Issuance of the hearing decision.

34.17 Content of decision.

34.18 Issuance of the wage garnishment order.

34.19 Amounts to be withheld under a garnishment order.

34.20 Amount to be withheld under multiple garnishment orders.

34.21 Employer certification.

34.22 Employer responsibilities.

34.23 Exclusions from garnishment.

34.24 Claim of financial hardship by debtor subject to garnishment.

34.25 Determination of financial hardship.

34.26 Ending garnishment.

34.27 Actions by employer prohibited by law.

34.28 Refunds of amounts collected in error.

34.29 Enforcement action against employer for noncompliance with garnishment order.

34.30 Application of payments and accrual of interest.

Authority: 31 U.S.C. 3720D, unless otherwise noted.

Sec. 34.1 Purpose of this part.

This part establishes procedures the Department of Education uses to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy delinquent debt owed to the United States.

(Authority: 31 U.S.C. 3720D)

Sec. 34.2 Scope of this part.

(a) This part applies to collection of any financial obligation owed to the United States that arises under a program we administer.

(b) This part applies notwithstanding any provision of State law.

(c) We may compromise or suspend collection by garnishment of a debt in accordance with applicable law.

(d) We may use other debt collection remedies separately or in conjunction with administrative wage garnishment to collect a debt. [[Page 8143]]

(e) To collect by offset from the salary of a Federal employee, we use the procedures in 34 CFR part 31, not those in this part.

(Authority: 31 U.S.C. 3720D)

Sec. 34.3 Definitions.

As used in this part, the following definitions apply:

Administrative debt means a debt that does not arise from an individual's obligation to repay a loan or an overpayment of a grant received under a student financial assistance program authorized under Title IV of the Higher Education Act.

Business day means a day Monday through Friday, unless that day is a Federal holiday.

Certificate of service means a certificate signed by an authorized official of the U.S. Department of Education (the Department) that indicates the nature of the document to which it pertains, the date we mail the document, and to whom we are sending the document.

Day means calendar day. For purposes of computation, the last day of a period will be included unless that day is a Saturday, a Sunday, or a Federal legal holiday; in that case, the last day of the period is the next business day after the end of the period.

Debt or claim means any amount of money, funds, or property that an appropriate official of the Department has determined an individual owes to the United States under a program we administer.

Debtor means an individual who owes a delinquent nontax debt to the United States under a program we administer.

Disposable pay. This term--

(a)(1) Means that part of a debtor's compensation for personal services, whether or not denominated as wages, from an employer that remains after the deduction of health insurance premiums and any amounts required by law to be withheld.

(2) For purposes of this part, ``amounts required by law to be withheld" include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld under a court order; and

(b) Includes, but is not limited to, salary, bonuses, commissions, or vacation pay.

Employer. This term--

(a) Means a person or entity that employs the services of another and that pays the latter's wages or salary;

(b) Includes, but is not limited to, State and local governments; and

(c) Does not include an agency of the Federal Government.

Financial hardship means an inability to meet basic living expenses for goods and services necessary for the survival of the debtor and his or her spouse and dependents.

Garnishment means the process of withholding amounts from an employee's disposable pay and paying those amounts to a creditor in satisfaction of a withholding order.

We means the United States Department of Education.

Withholding order. (a) This term means any order for withholding or garnishment of pay issued by this Department, another Federal agency, a State or private non-profit guaranty agency, or a judicial or administrative body.

(b) For purposes of this part, the terms ``wage garnishment order" and ``garnishment order" have the same meaning as ``withholding order."

You means the debtor.

(Authority: 31 U.S.C. 3720D)

Sec. 34.4 Notice of proposed garnishment.

(a) We may start proceedings to garnish your wages whenever we determine that you are delinquent in paying a debt owed to the United States under a program we administer.

(b) We start garnishment proceedings by sending you a written notice of the proposed garnishment.

(c) At least 30 days before we start garnishment proceedings, we mail the notice by first class mail to your last known address.

(d)(1) We keep a copy of a certificate of service indicating the date of mailing of the notice.

(2) We may retain this certificate of service in electronic form.

(Authority: 31 U.S.C. 3720D)

Sec. 34.5 Contents of a notice of proposed garnishment.

In a notice of proposed garnishment, we inform you of--

(a) The nature and amount of the debt;

(b) Our intention to collect the debt through deductions from pay until the debt and all accumulated interest, penalties, and collection costs are paid in full; and

(c) An explanation of your rights, including those in Sec. 34.6, and the time frame within which you may exercise your rights.

(Authority: 31 U.S.C. 3720D)

Sec. 34.6 Rights in connection with garnishment.

Before starting garnishment, we provide you the opportunity--

(a) To inspect and copy our records related to the debt;

(b) To enter into a written repayment agreement with us to repay the debt under terms we consider acceptable;

(c) For a hearing in accordance with Sec. 34.8 concerning--

(1) The existence, amount, or current enforceability of the debt;

(2) The rate at which the garnishment order will require your employer to withhold pay; and

(3) Whether you have been continuously employed less than 12 months after you were involuntarily separated from employment.

(Authority: 31 U.S.C. 3720D)

Sec. 34.7 Consideration of objection to the rate or amount of withholding.

(a) We consider objections to the rate or amount of withholding only if the objection rests on a claim that withholding at the proposed rate or amount would cause financial hardship to you and your dependents.

(b) We do not provide a hearing on an objection to the rate or amount of withholding if the rate or amount we propose to be withheld does not exceed the rate or amount agreed to under a repayment agreement reached within the preceding six months after a previous notice of proposed garnishment.

(c) We do not consider an objection to the rate or amount of withholding based on a claim that by virtue of 15 U.S.C. 1673, no amount of wages are available for withholding by the employer.

(Authority: 31 U.S.C. 3720D)

Sec. 34.8 Providing a hearing.

(a) We provide a hearing if you submit a written request for a hearing concerning the existence, amount, or enforceability of the debt or the rate of wage withholding.

(b) At our option the hearing may be an oral hearing under Sec. 34.9 or a paper hearing under Sec. 34.10.

(Authority: 31 U.S.C. 3720D)

Sec. 34.9 Conditions for an oral hearing.

(a) We provide an oral hearing if you--

(1) Request an oral hearing; and

(2) Show in the request a good reason to believe that we cannot resolve the issues in dispute by review of the documentary evidence, by demonstrating that the validity of the claim turns on the credibility or veracity of witness testimony.

(b) If we determine that an oral hearing is appropriate, we notify you how to receive the oral hearing.

(c)(1) At your option, an oral hearing may be conducted either in-person or by telephone conference.

[[Page 8144]]

(2) We provide an in-person oral hearing with regard to administrative debts only in Washington D.C.

(3) We provide an in-person oral hearing with regard to debts based on student loan or grant obligations only at our regional service centers in Atlanta, Chicago, or San Francisco.

(4) You must bear all travel expenses you incur in connection with an in-person hearing.

(5) We bear the cost of any telephone calls we place in order to conduct an oral hearing by telephone.

(d)(1) To arrange the time and location of the oral hearing, we ordinarily attempt to contact you first by telephone call to the number you provided to us.

(2) If we are unable to contact you by telephone, we leave a message directing you to contact us within 5 business days to arrange the time and place of the hearing.

(3) If we can neither contact you directly nor leave a message with you by telephone--

(i) We notify you in writing to contact us to arrange the time and place of the hearing; or

(ii) We select a time and place for the hearing, and notify you in writing of the time and place set for the hearing.

(e) We consider you to have withdrawn the request for an oral hearing if--

(1) Within 15 days of the date of a written notice to contact us, we receive no response to that notice; or

(2) Within five business days of the date of a telephone message to contact us, we receive no response to that message.

(Authority: 31 U.S.C. 3720D)

Sec. 34.10 Conditions for a paper hearing.

We provide a paper hearing--

(a) If you request a paper hearing;

(b) If you requested an oral hearing, but we determine under Sec. 34.9(e) that you have withdrawn that request;

(c) If you fail to appear for a scheduled oral hearing, as provided in Sec. 34.15; or

(d) If we deny a request for an oral hearing because we conclude that, by a review of the written record, we can resolve the issues raised by your objections.

(Authority: 31 U.S.C. 3720D)

Sec. 34.11 Timely request for a hearing.

(a) A hearing request is timely if--

(1) You mail the request to the office designated in the garnishment notice and the request is postmarked not later than the 30th day following the date of the notice; or

(2) The designated office receives the request not later than the 30th day following the date of the garnishment notice.

(b) If we receive a timely written request from you for a hearing, we will not issue a garnishment order before we--

(1) Provide the requested hearing; and

(2) Issue a written decision on the objections you raised.

(c) If your written request for a hearing is not timely--

(1) We provide you a hearing; and

(2) We do not delay issuance of a garnishment order unless--

(i) We determine from credible representations in the request that the delay in filing the request for hearing was caused by factors over which you had no control; or

(ii) We have other good reason to delay issuing a garnishment order.

(d) If we do not complete a hearing within 60 days of an untimely request, we suspend any garnishment order until we have issued a decision.

(Authority: 31 U.S.C. 3720D)

Sec. 34.12 Request for reconsideration.

(a) If you have received a decision on an objection to garnishment you may file a request for reconsideration of that decision.

(b) We do not suspend garnishment merely because you have filed a request for reconsideration.

(c) We consider your request for reconsideration if we determine that--

(1) You base your request on grounds of financial hardship, and your financial circumstances, as shown by evidence submitted with the request, have materially changed since we issued the decision so that we should reduce the amount to be garnished under the order; or

(2)(i) You submitted with the request evidence that you did not previously submit; and

(ii) This evidence demonstrates that we should reconsider your objection to the existence, amount, or enforceability of the debt.

(d)(1) If we agree to reconsider the decision, we notify you.

(2)(i) We may reconsider based on the request and supporting evidence you have presented with the request; or

(ii) We may offer you an opportunity for a hearing to present evidence.

(Authority: 31 U.S.C. 3720D)

Sec. 34.13 Conduct of a hearing.

(a)(1) A hearing official conducts any hearing under this part.

(2) The hearing official may be any qualified employee of the Department whom the Department designates to conduct the hearing.

(b)(1) The hearing official conducts any hearing as an informal proceeding.

(2) A witness in an oral hearing must testify under oath or affirmation.

(3) The hearing official maintains a summary record of any hearing.

(c) Before the hearing official considers evidence we obtain that was not included in the debt records available for inspection when we sent notice of proposed garnishment, we notify you that additional evidence has become available, may be considered by the hearing official, and is available for inspection or copying.

(d) The hearing official considers any objection you raise and evidence you submit--

(1) In or with the request for a hearing;

(2) During an oral hearing;

(3) By the date that we consider, under Sec. 34.9(e), that a request for an oral hearing has been withdrawn; or

(4) Within a period we set, ordinarily not to exceed seven business days, after--

(i) We provide you access to our records regarding the debt, if you requested access to records within 20 days after the date of the notice under Sec. 34.4;

(ii) We notify you that we have obtained and intend to consider additional evidence;

(iii) You request an extension of time in order to submit specific relevant evidence that you identify to us in the request; or

(iv) We notify you that we deny your request for an oral hearing.

(Authority: 31 U.S.C. 3720D)

Sec. 34.14 Burden of proof.

(a)(1) We have the burden of proving the existence and amount of a debt.

(2) We meet this burden by including in the record and making available to the debtor on request records that show that--

(i) The debt exists in the amount stated in the garnishment notice; and

(ii) The debt is currently delinquent.

(b) If you dispute the existence or amount of the debt, you must prove by a preponderance of the credible evidence that--

(1) No debt exists;

(2) The amount we claim to be owed on the debt is incorrect, or

(3) You are not delinquent with respect to the debt.

(c)(1) If you object that the proposed garnishment rate would cause financial hardship, you bear the burden of proving by a preponderance of the credible evidence that withholding the [[Page 8145]] amount of wages proposed in the notice would leave you unable to meet the basic living expenses of you and your dependents.

(2) The standards for proving financial hardship are those in Sec. 34.24.

(d)(1) If you object on the ground that applicable law bars us from collecting the debt by garnishment at this time, you bear the burden of proving the facts that would establish that claim.

(2) Examples of applicable law that may prevent collection by garnishment include the automatic stay in bankruptcy (11 U.S.C. 362(a)), and the preclusion of garnishment action against a debtor who was involuntarily separated from employment and has been reemployed for less than a continuous period of 12 months (31 U.S.C. 3720D(b)(6)).

(e) The fact that applicable law may limit the amount that an employer may withhold from your pay to less than the amount or rate we state in the garnishment order does not bar us from issuing the order.

(Authority: 31 U.S.C. 3720D)

Sec. 34.15 Consequences of failure to appear for an oral hearing.

(a) If you do not appear for an in-person hearing you requested, or you do not answer a telephone call convening a telephone hearing, at the time set for the

hearing, we consider you to have withdrawn your request for an oral hearing.

(b) If you do not appear for an oral hearing but you demonstrate that there was good cause for not appearing, we may reschedule the oral hearing.

(c) If you do not appear for an oral hearing you requested and we do not reschedule the hearing, we provide a paper hearing to review your objections, based on the evidence in your file and any evidence you have already provided.

(Authority: 31 U.S.C. 3720D)

Sec. 34.16 Issuance of the hearing decision.

(a) Date of decision. The hearing official issues a written opinion stating his or her decision, as soon as practicable, but not later than 60 days after the date on which we received the request for hearing.

(b) If we do not provide you with a hearing and render a decision within 60 days after we receive your request for a hearing--

(1) We do not issue a garnishment order until the hearing is held and a decision rendered; or

(2) If we have already issued a garnishment order to your employer, we suspend the garnishment order beginning on the 61st day after we receive the hearing request until we provide a hearing and issue a decision.

(Authority: 31 U.S.C. 3720D)

Sec. 34.17 Content of decision.

(a) The written decision is based on the evidence contained in the hearing record. The decision includes--

(1) A description of the evidence considered by the hearing official;

(2) The hearing official's findings, analysis, and conclusions regarding objections raised to the existence or amount of the debt;

(3) The rate of wage withholding under the order, if you objected that withholding the amount proposed in the garnishment notice would cause an extreme financial hardship; and

(4) An explanation of your rights under this part for reconsideration of the decision.

(b) The hearing official's decision is the final action of the Secretary for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 et seq.).

(Authority: 31 U.S.C. 3720D)

Sec. 34.18 Issuance of the wage garnishment order.

(a)(1) If you fail to make a timely request for a hearing, we issue a garnishment order to your employer within 30 days after the deadline for timely requesting a hearing.

(2) If you make a timely request for a hearing, we issue a withholding order within 30 days after the hearing official issues a decision to proceed with garnishment.

(b)(1) The garnishment order we issue to your employer is signed by an official of the Department designated by the Secretary.

(2) The designated official's signature may be a computer-generated facsimile.

(c)(1) The garnishment order contains only the information we consider necessary for your employer to comply with the order and for us to ensure proper credit for payments received from your employer.

(2) The order includes your name, address, and social security number, as well as instructions for withholding and information as to where your employer must send the payments.

(d)(1) We keep a copy of a certificate of service indicating the date of mailing of the order.

(2) We may create and maintain the certificate of service as an electronic record.

(Authority: 31 U.S.C. 3720D)

Sec. 34.19 Amounts to be withheld under a garnishment order.

(a)(1) After an employer receives a garnishment order we issue, the employer must deduct from all disposable pay of the debtor during each pay period the amount directed in the garnishment order unless this section or Sec. 34.20 requires a smaller amount to be withheld.

(2) The amount specified in the garnishment order does not apply if other law, including this section, requires the employer to withhold a smaller amount.

(b) The employer must comply with our garnishment order by withholding the lesser of--

(1) The amount directed in the garnishment order; or--

(2) The amount specified in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment); that is, the amount by which a debtor's disposable pay exceeds an amount equal to 30 times the minimum wage. (See 29 CFR 870.10.)

(Authority: 31 U.S.C. 3720D)

Sec. 34.20 Amount to be withheld under multiple garnishment orders.

If a debtor's pay is subject to several garnishment orders, the employer must comply with our garnishment order as follows:

(a) Unless other Federal law requires a different priority, the employer must pay us the amount calculated under Sec. 34.19(b) before the employer complies with any later garnishment orders, except a family support withholding order.

(b) If an employer is withholding from a debtor's pay based on a garnishment order served on the employer before our order, or if a withholding order for family support is served on an employer at any time, the employer must comply with our garnishment order by withholding an amount that is the smaller of--

(1) The amount calculated under Sec. 34.19(b); or

(2) An amount equal to 25 percent of the debtor's disposable pay less the amount or amounts withheld under the garnishment order or orders with priority over our order.

(c)(1) If a debtor owes more than one debt arising from a program we administer, we may issue multiple garnishment orders.

(2) The total amount withheld from the debtor's pay for orders we issue under paragraph (c)(1) of this section does not exceed the amounts specified in the orders, the amount specified in Sec. 34.19(b)(2), or 15 percent of the debtor's disposable pay, whichever is smallest. [[Page 8146]]

(d) An employer may withhold and pay an amount greater than that amount in paragraphs (b) and (c) of this section if the debtor gives the employer written consent.

(Authority: 31 U.S.C. 3720D)

Sec. 34.21 Employer certification.

(a) Along with a garnishment order, we send to an employer a certification in a form prescribed by the Secretary of the Treasury.

(b) The employer must complete and return the certification to us within the time stated in the instructions for the form.

(c) The employer must include in the certification information about the debtor's employment status, payment frequency, and disposable pay available for withholding.

(Authority: 31 U.S.C. 3720D)

Sec. 34.22 Employer responsibilities.

(a)(1) Our garnishment order indicates a reasonable period of time within which an employer must start withholding under the order.

(2) The employer must promptly pay to the Department all amounts the employer withholds according to the order.

(b) The employer may follow its normal pay and disbursement cycles in complying with the garnishment order.

(c) The employer must withhold the appropriate amount from the debtor's wages for each pay period until the employer receives our notification to discontinue wage garnishment.

(d) The employer must disregard any assignment or allotment by an employee that would interfere with or prohibit the employer from complying with our garnishment order, unless that assignment or allotment was made for a family support judgment or order.

(Authority: 31 U.S.C. 3720D)

Sec. 34.23 Exclusions from garnishment.

(a) We do not garnish your wages if we have credible evidence that you--

(1) Were involuntarily separated from employment; and

(2) Have not yet been reemployed continuously for at least 12 months.

(b) You have the burden of informing us of the circumstances surrounding an involuntary separation from employment.

(Authority: 31 U.S.C. 3720D)

Sec. 34.24 Claim of financial hardship by debtor subject to garnishment.

(a) You may object to a proposed garnishment on the ground that withholding the amount or at the rate stated in the notice of garnishment would cause financial hardship to you and your dependents. (See Sec. 34.7)

(b) You may, at any time, object that the amount or the rate of withholding which our order specifies your employer must withhold causes financial hardship.

(c)(1) We consider an objection to an outstanding garnishment order and provide you an opportunity for a hearing on your objection only after the order has been outstanding for at least six months.

(2) We may provide a hearing in extraordinary circumstances earlier than six months if you show in your request for review that your financial circumstances have substantially changed after the

notice of proposed garnishment because of an event such as injury, divorce, or catastrophic illness.

(d)(1) You bear the burden of proving a claim of financial hardship by a preponderance of the credible evidence.

(2) You must prove by credible documentation--

(i) The amount of the costs incurred by you, your spouse, and any dependents, for basic living expenses; and

(ii) The income available from any source to meet those expenses.

(e)(1) We consider your claim of financial hardship by comparing--

(i) The amounts that you prove are being incurred for basic living expenses; against

(ii) The amounts spent for basic living expenses by families of the same size and similar income to yours.

(2) We regard the standards published by the Internal Revenue Service under 26 U.S.C. 7122(c)(2) (the "National Standards") as establishing the average amounts spent for basic living expenses for families of the same size as, and with family incomes comparable to, your family.

(3) We accept as reasonable the amount that you prove you incur for a type of basic living expense to the extent that the amount does not exceed the amount spent for that expense by families of the same size and similar income according to the National Standards.

(4) If you claim for any basic living expense an amount that exceeds the amount in the National Standards, you must prove that the amount you claim is reasonable and necessary.

(Authority: 31 U.S.C. 3720D)

Sec. 34.25 Determination of financial hardship.

(a)(1) If we conclude that garnishment at the amount or rate proposed in a notice would cause you financial hardship, we reduce the amount of the proposed garnishment to an amount that we determine will allow you to meet proven basic living expenses.

(2) If a garnishment order is already in effect, we notify your employer of any change in the amount the employer must withhold or the rate of withholding under the order.

(b) If we determine that financial hardship would result from garnishment based on a finding by a hearing official or under a repayment agreement we reached with you, this determination is effective for a period not longer than six months after the date of the finding or agreement.

(c)(1) After the effective period referred to in paragraph (b) of this section, we may require you to submit current information regarding your family income and living expenses.

(2) If we conclude from a review of that evidence that we should increase the rate of withholding or payment, we--

(i) Notify you; and

(ii) Provide you with an opportunity to contest the determination and obtain a hearing on the objection under the procedures in Sec. 34.24.

(Authority: 31 U.S.C. 3720D)

Sec. 34.26 Ending garnishment.

(a)(1) A garnishment order we issue is effective until we rescind the order.

(2) If an employer is unable to honor a garnishment order because the amount available for garnishment is insufficient to pay any portion

of the amount stated in the order, the employer must--

(i) Notify us; and

(ii) Comply with the order when sufficient disposable pay is available.

(b) After we have fully recovered the amounts owed by the debtor, including interest, penalties, and collection costs, we send the debtor's employer notification to stop wage withholding.

(Authority: 31 U.S.C. 3720D)

Sec. 34.27 Actions by employer prohibited by law.

An employer may not discharge, refuse to employ, or take disciplinary action against a debtor due to the issuance of a garnishment order under this part.

(Authority: 31 U.S.C. 3720D)

Sec. 34.28 Refunds of amounts collected in error.

(a) If a hearing official determines under Sec. 34.16 and 34.17 that a person does not owe the debt described in our notice or that an administrative wage garnishment under this part was barred by law at the time of the collection [[Page 8147]] action, we promptly refund any amount collected by means of this garnishment.

(b) Unless required by Federal law or contract, we do not pay interest on a refund.

(Authority: 31 U.S.C. 3720D)

Sec. 34.29 Enforcement action against employer for noncompliance with garnishment order.

(a) If an employer fails to comply with Sec. 34.22 to withhold an appropriate amount from wages owed and payable to an employee, we may sue the employer for that amount.

(b)(1) We do not file suit under paragraph (a) of this section before we terminate action to enforce the debt as a personal liability of the debtor.

(2) However, the provision of paragraph (b)(1) of this section may not apply if earlier filing of a suit is necessary to avoid expiration of any applicable statute of limitations.

(c)(1) For purposes of this section, termination of an action to enforce a debt occurs when we terminate collection action in accordance with the FCCS, other applicable standards, or paragraph (c)(2) of this section.

(2) We regard termination of the collection action to have occurred if we have not received for one year any payments to satisfy the debt, in whole or in part, from the particular debtor whose wages were subject to garnishment.

(Authority: 31 U.S.C. 3720D)

Sec. 34.30 Application of payments and accrual of interest.

We apply payments received through a garnishment in the following order--

(a) To costs incurred to collect the debt;

(b) To interest accrued on the debt at the rate established by--

(1) The terms of the obligation under which it arises; or

(2) Applicable law; and

(c) To outstanding principal of the debt.

(Authority: 31 U.S.C. 3720D)

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

Analysis of Comments and Changes

An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We discuss issues according to subject, under the sections of the regulations to which they pertain.

Scope of Garnishment Authority; Collection of Student Loans (Sec. 34.1 and 34.2)

Comment: One commenter contended that the Department lacks legal authority to use the garnishment

power in the DCIA to collect student loans, because the commenter views section 488A of the Higher Education Act, 20 U.S.C. 1095a, as restricting the Department's garnishment authority to ten percent of disposable pay.

Discussion: The commenter bases this contention not on the terms of the DCIA, but on a rule of statutory construction that where two statutes authorize an action, the more specific of the two sets the limits to that authority. Section 488A of the HEA authorizes the

Secretary of Education and guaranty agencies to garnish up to ten percent of debtor pay to collect student loans, while the DCIA authorizes Federal agencies to garnish up to fifteen percent of debtor pay. The commenter views the HEA as the more specific of the two statutes, and contends that the HEA limits the Department's garnishment power to the ten percent rate it authorizes. We disagree that the HEA is the more specific of the two statutes; both statutes apply to a distinctive category of entities. The HEA extended garnishment authority to the Department and to some 36 separate State and non-profit entities operating as guaranty agencies, and empowers the latter group to collect both on their own behalf and on behalf of the Federal government.^{1\} The DCIA applies only to Federal agencies, and applies exclusively to collection of debts owed to the Federal Government.

^{1\} Guarantors are authorized to collect "the amount owed" by the defaulter, 20 U.S.C. 1095a(a), which includes that portion of the loan debt not covered by Federal reinsurance, as well as that portion of the recovery that the guarantor is authorized to retain.

20 U.S.C. 1078(c)(1), 1078(c)(6).

Even if the HEA were the more specific of the two authorities, the rule that the more specific of two potentially applicable statutes controls is merely one of several tools used to discern the intent of Congress. Another way to determine the intent of Congress when two potentially-applicable statutes adopt inconsistent terms is to view the more recent of the two as embodying the current intent of Congress. The 1996 DCIA is the more recent of the two statutes.

Thus, Congress' intent to allow garnishment at 15 percent supersedes the HEA's more limited authority.

Looking to the more recent of two statutes to discern Congress' intent is particularly apt because the DCIA garnishment provision is both more recently enacted and part of a comprehensive scheme inconsistent with the limits of the earlier HEA authority. The DCIA supersedes the more limited authority in HEA section 488A because the DCIA garnishment authority is an addition to a comprehensive statutory scheme (31 U.S.C. 3701-3720E) for enforcement of Federal debts,

including student loan debts. That scheme includes, for example, authority under 31 U.S.C. 3720A to collect Federal debt by tax refund offset, and, under 31 U.S.C. 3711(g), to report delinquent Federal debt to credit bureau. Thus, because Congress intended this statutory scheme as in effect before the 1996 DCIA amendments to apply to student loans, there is no reason to infer that Congress did not intend the garnishment provision added by the DCIA to this scheme in 1996 to apply to student loans as well.

Changes to the roles of specific Federal agencies made by the DCIA show that Congress intended that the tools available under this statutory scheme, including garnishment, be used to collect student loans. For the first time, the DCIA required Federal agencies to transfer collection responsibility for their delinquent debt to Treasury, or to other Federal agencies which were designated "debt collection centers." The DCIA authorizes Treasury, as well as these designated "debt collection centers," to use all the collection tools provided in the DCIA, including its garnishment provision, to collect debts which they "cross-service." Education has been designated a debt collection center for student loans, thus, it is illogical to infer any congressional intent to bar Education from using the same DCIA garnishment authority to collect Federal student loan debts that Treasury and other agencies are meant to use to collect Federal debts.

Moreover, if Education had not been designated a debt collection center, the DCIA would have required Education to transfer its student loan debts to Treasury (or another agency designated as a collection center) for cross-servicing. Treasury plainly has full authority to use DCIA garnishment to collect any debts transferred to it for servicing, including student loans from Education. Thus, because Treasury or other Federal agencies would have power to collect those very student loans at the 15 percent rate, it is illogical to infer any congressional intent to restrict garnishment to the lesser HEA level when those same loans are serviced by Education itself.

The text of the DCIA itself shows that the absence of any language excluding student loans from garnishment under 31 U.S.C. 3720D was no oversight. The DCIA expanded the scope of Federal offsets by amending 31 U.S.C. 3716 to authorize offset by Treasury against such Federal payments as Social Security benefits, 31 U.S.C. 3716(b)(3), but expressly excluded title IV HEA student assistance payments from offset. 31 U.S.C. 3716(b)(1)(C). That express exclusion of student aid from the DCIA offset provision, contrasted against the absence of any reference to student loans in the DCIA garnishment provision--a provision copied almost verbatim from HEA section 488A--shows that Congress spoke clearly when it meant to exclude student aid from the reach of the DCIA tools, and intended no exclusion of student loans from the DCIA garnishment provision.

In addition to the language of the statute itself, the legislative context of the garnishment provision shows that Congress intended the Department to use this DCIA authority to collect student loans. The subcommittee in which the provision originated understood from testimony before it that the provision would increase Education's authority to 15 percent to garnish [[Page 8148]] debtor wages to collect student loans.\2\ Subsequent oversight action by that subcommittee \3\ and by the General Accounting Office \4\ at the request of the subcommittee demonstrate the subcommittee's expectation, and Education's intention, that Education would implement the DCIA 15 percent wage garnishment authority to collect student loans.

\2\ Hearing on H.R. 2234, the Debt Collection Improvement Act of 1995, before the Subcommittee on Government Management, Information and Technology of the Committee on Government Reform and Oversight, 104th Cong., 1st Sess. on H.R. 2234, Sept. 8, 1995 at 70, 159, 253. Moreover, the Congressional Budget Office estimated substantial increased recoveries on defaulted loans from these DCIA proposals. See 142 Cong. Rec. S1825 (Memorandum from John Righter, CBO, to Patrick Windham, Sen. Committee on Commerce, Science, and Transportation, regarding Preliminary scoring of the "Debt Collection Improvement Act of 1996," Chapter 2 of a proposed amendment to H.R. 3019). As explained by cognizant staff, CBO based its estimates on the understanding that Education would use fully these DCIA tools, including garnishment, to collect defaulted student loans.

\3\ Hearing on Federal Debt Collection Practices before the Subcommittee on Government Management, Information and Technology of the Committee on Government Reform and Oversight, 105th Cong., 1st Sess., Nov. 12, 1997, at 90, 91.

\4\ General Accounting Office: Debt Collection Improvement Act of 1996: Status of Selected Agencies' Implementation of Administrative Wage Garnishment (GAO-02-313).

For these reasons, the Department considers unfounded the view that the HEA garnishment authority precludes use of the DCIA garnishment authority to collect student loans.

Changes: None.

Comment: One commenter objected that the explanation for the Department's implementation of DCIA garnishment authority in these regulations left confusion about whether current FFELP regulations, which address garnishment under HEA section 488A by student loan guarantors, will continue to apply to those guarantors, and invited speculation about whether

student loan guarantors would continue to garnish to collect debts they held, and if so, whether the HEA, rather than the DCIA, authorized them to do so.

Discussion: The statements made by the Department regarding its intention to use DCIA garnishment authority make no suggestion that the role and authority of student loan guarantors has changed. The HEA expressly authorizes student loan guarantors to collect by garnishment, and nothing in the DCIA expressly or implicitly addresses the authority of guarantors to garnish. Regulations adopted under the Federal Family Education Loan Program (FFELP) at 34 CFR 682.410(b)(9) to implement that authority for guarantors expressly apply to action by FFELP loan guarantors to conduct garnishment under HEA section 488A. Those regulations do not state or imply that they apply to the Department, either when the Department conducted garnishment under HEA section 488A or under any other authority. Because the FFELP regulations in most instances closely track the language of HEA section 488A, the Department, by following the provisions of the statute itself, generally conformed to those regulations. Because the DCIA garnishment provision mirrors HEA section 488A, the Department's reasons for interpreting and implementing several DCIA provisions apply with equal force to identical terms of HEA section 488A, which the Department has authority to interpret. That reasoning therefore helps clarify the intent of identical language found in both statutes. Discussion of the HEA in the explanation for this rule did not suggest that the Department considered student loan guarantors to be authorized to collect under the DCIA authority.

Changes: None.

Computation of Time and System Changes (Sec. 34.3)

Comment: A commenter objects that adopting definitions of "day" and "business day" may require modification of current systems for mailings. As an example, the commenter stated that the garnishment order cannot be issued until 30 days after the date of the notice, and the proposed rule provides that if the last day of a period is a Saturday, Sunday, or Federal holiday, the period runs to the next business day. Thus, the rule would be violated if a contractor were to mail a garnishment order exactly 30 days after the date of the notice, if that 30th day fell on a Saturday or Sunday.

Discussion: These rules adopt verbatim the definitions and approach adopted by Treasury in its rule, which mirror rules almost invariably applied in litigation. The only act we take under this rule within a specified number of days after an event or deadline is the issuance of the garnishment order; Sec. 34.4 states that we provide notice of the proposed garnishment "at least" 30 days before we begin garnishment, and Sec. 34.18(a)(1) provides that we issue a garnishment order

“within 30 days after the deadline for timely requesting a hearing” or “within 30 days after a decision.” The Department is responsible for ensuring that its garnishment activities, and the actions of contractors as needed to support those activities, conform to this rule. We therefore see no basis for the complaint that the rule would require modification of systems used to create and mail the notices and orders Education now uses in its garnishment process.

Changes: None.

Rights in Connection With Garnishment (Sec. 34.6)

Comment: A commenter objected that the regulations do not articulate specific defenses that may be available to the debtor as grounds for objection to the proposed garnishment, and urged that the rule should mandate use of a form request for hearing of the kind now used by the Department for garnishment action to collect student loans.

Discussion: The Department has used, and will continue to use for collection of student loan debts, a form Request for Hearing that lists potentially available grounds for objection. Because this regulation applies to garnishment to collect any debts held by the Department, the Department did not consider it necessary to adopt any specific provisions applicable only to some debts. The Department has no intention to change this procedure for student loans. However, neither the statute, Treasury regulations, nor due process requires use of a notice that lists potentially available defenses. There is no need to include in these regulations provisions that would imply that such a duty exists.

Changes: None.

Comment: A commenter urged that the regulations should specifically require the Department to give notice that a debtor may object to garnishment on the ground that the debtor was recently reemployed after involuntary separation.

Discussion: The Department agrees that debtors may not be aware that they may object on the grounds that the debtor has been recently been reemployed after involuntary separation from employment. The notice and the request for hearing now used by the Department for HEA garnishment explain this option. Because this objection applies regardless of the nature of the debt to be collected, the Department agrees that the regulations should commit to providing express notice of this option.

Changes: The regulations are modified in Sec. 34.6 to provide that the pre-garnishment notice includes an explanation of the availability of objection on the grounds of recent reemployment after involuntary separation.

Comment: A commenter urged that the regulations should specifically require notice to the debtor that limits on withholding imposed by 15 U.S.C. 1671 et seq. may preclude actual withholding of pay.

Discussion: Neither the Department, nor any other garnishing creditor, can reliably determine whether, and for what period, 15 U.S.C. 1673 may bar an employer from honoring a particular garnishment order. That statute imposes the duty on the employer to honor its limits, because only the employer actually knows both the amount of the debtor's disposable pay and the number, amount, relative priority, and duration of all withholding orders that may affect the debtor. The court or administrative body that issues a garnishment order meets its duty under 15 U.S.C. 1673(c) by stating in the garnishment order that the employer must pay no more than the amount permitted by that statute. Standard Form 329B, the garnishment order prescribed for Federal agencies by Treasury, thus directs the employer to pay the lesser of the amount permitted under 15 U.S.C. 1673 or the amount determined by the agency (either 15 percent of disposable pay or a lesser amount).

Therefore, these regulations, consistent with Treasury regulations, do not recognize as a valid defense to a garnishment action a contention by the debtor that the proposed withholding order, if honored by the employer, would result in withholding amounts greater than those permitted by 15 U.S.C. 1673. Because this statute provides no defense to the debtor in a proceeding under this part, it does not affect the debtor's ability to respond in a meaningful manner in the proposed garnishment. We note that neither 15 U.S.C. 1671 et seq., the garnishment statutes themselves (HEA section 488A or 31 [[Page 8149]] U.S.C. 3720D), nor Treasury regulations require the creditor who intends to garnish to include in the notice or complaint initiating collection action an explanation of the effect of 15 U.S.C. 1673. There appears to be little value in including an explanation of this statute in the notice, which is intended to explain the debtor's rights in the garnishment proceeding.

Changes: None.

Comment: A commenter stated that the regulations lacked language to mirror the assurance in the preamble that the Department provides hearings even if the request for a hearing is not made timely, and that the regulations should include this assurance.

Discussion: Section 34.8 requires the debtor to make any request for a hearing in writing, regardless of the type of hearing sought. Section 34.11(c)(1) expressly states that we provide a hearing even if that written request for a hearing is untimely. That provision contains the assurance that the commenter describes, and no additional language is needed to ensure that right.

Changes: None.

Comment: A commenter stated that regulations should require that the Department make available for inspection by the debtor prior to the hearing any evidence on which the Department intends to rely to establish the existence and amount of the debt.

Discussion: The proposed rule, in Sec. 34.5 and 34.6(a), stated that the Department would explain in the pre-garnishment notice that the debtor may inspect and copy records regarding the debt, and in Sec. 34.14(a)(2) further provided that the Department would, on request, make available to the debtor, as part of the hearing process, the evidence which we believe establishes the existence and amount of the debt. These provisions ensure that the debtor has an opportunity to examine the evidence on which the Department's claim rests, in a timely manner, that permits the debtor effectively to respond with evidence and argument before a decision is issued. No change is needed.

Changes: None.

Conditions for an Oral Hearing (Sec. 34.9)

Comment: A commenter objected to the requirement that the objecting debtor who seeks an oral hearing must state reasons why the objection cannot be satisfactorily reviewed based on the records, including any material provided by the debtor. The commenter objected that this requirement places an unfair burden on borrowers, many of whom may be low-income or unsophisticated.

Discussion: By requiring the debtor to show that an oral hearing is actually needed to resolve the disputed facts, the regulations adopt the same approach used in judicial proceedings, the paradigm of due process. Courts routinely dispose of defenses--including those raised by pro se or unsophisticated defendants--through summary judgment rulings, and that disposition meets constitutional due process standards. The Department has limited resources available to conduct oral hearings; published statistics show that the Department received approximately 9000 requests for hearings in its HEA garnishment actions in FY 2000. General Accounting Office: Debt Collection Improvement Act of 1996: Status of Selected Agencies' Implementation of Administrative Wage Garnishment (GAO-02-313) p. 16. Limitations on resources do not warrant curtailing the rights of debtors, but do militate in favor of the Department, like Federal courts exercising summary judgment authority, avoiding unnecessary hearings.

Consistent with Treasury regulations applicable to offset proceedings, 31 CFR 901.3(e), and to DCIA garnishment actions, 31 CFR 285.11(e), the Department in these regulations simply requires the debtor who seeks an oral hearing to show a good reason why we cannot resolve the disputed issues by reviewing the debt records. This is a common-sense standard that we have generously applied for years in Federal offset

proceedings. The Department sees no readily articulated and sensible lesser standard, and no reason to commit in these regulations to provide an oral hearing on request regardless of the nature of the objection or the kind of evidence available.

Proposed Sec. 34.10(a) stated that a paper hearing would be held upon request, but inadvertently omitted the word "or" before stating that paper hearings would be provided if we conclude that we can resolve the issues raised by an objection without an oral hearing.

Changes: Section 34.10(a) of the proposed rule is revised to state that we provide a paper hearing upon request by the debtor or if an oral hearing was requested but we determine that we can resolve the issues raised by the objection through a review of the written record regarding the debt.

Comment: A commenter urged that, for in-person or telephone hearings, the regulations be revised to state that the Department must send a copy of the hearing file to the debtor prior to the hearing.

Discussion: The Department has used, and will continue to use, a pre-garnishment notice that encourages the debtor to request copies of the records that pertain to the debt to be collected by garnishment, and to do so before the hearing, and indeed before the submission of the actual objection to the proposed garnishment. The proposed rule in Sec. 34.5(c)(1) provides that the Department makes these records available on request. If the debtor does not choose to request and review these records, we see no need to incur the expense of sending the records to the debtor.

Changes: None.

Conduct of Hearings (Sec. 34.13)

Comment: One commenter disagreed with the statement in the preamble that contractors cannot rule on debtor objections. The commenter considered the statement that this activity was an inherently governmental function to imply that student loan guarantors could not use independent hearing officials, including administrative law judges and other parties, whom they retain by contract.

Discussion: The Department intended no inference that student loan guarantors could not use contracts to retain independent hearing officials. HEA section 488A requires student loan guarantors to appoint administrative law judges or to retain independent hearing officials, not under the supervision or control of the guarantor, to adjudicate debtor objections to the proposed garnishment; that retainer agreement will obviously be embodied in a contract with the hearing official. As Treasury stated in promulgating controlling regulations, Federal agencies "may not contract out 'inherently governmental functions,' . . . [but] contractors can[] assist agencies" by mailing notices, orders authorized by the agency, receiving documents

from debtors and employers, and arranging repayment agreements approved by the agency. 63 FR 25137. Unlike these supporting functions, adjudication of debtor disputes to the compulsory taking of a portion of their wages by garnishment is an inherently governmental function. The Department therefore cannot use contractors to decide debtor objections. The Department recognizes that the HEA requires guarantors to use individuals, including administrative law judges, who are independent of the guarantor to perform this adjudication function. We fully agree that guarantors can arrange for these services by contracts.

Changes: None.

Comment: One commenter agreed with the statement that only qualified employees of the Department may conduct hearings, but objected to the statement that the Department may use contracted services to analyze debtor objections and propose appropriate findings to those objections. The commenter requested that the Department clarify that any findings proposed by contractors are not final, and that Department hearing officials must exercise independent judgment and provide independent rationales for decisions. The commenter further urged that the regulations bar use of employees of collection agencies or other agencies collecting debts on behalf of the Department to analyze objections. The commenter urged that contractors receive specific training on borrower defenses and other critical hearing procedures.

Discussion: The Department agrees with the commenter that Department contractors cannot conduct hearings or rule on objections to garnishment, because those are inherently governmental functions. As discussed earlier, HEA section 488A expressly requires guarantors to use independent hearing officials not under the control of the guarantor to judge debtor objections to garnishment. In contrast, both HEA section 488A and 31 U.S.C. 3720D direct the Department itself to provide a hearing and decide debtor objections. The Department cannot, therefore, delegate this duty to a contractor. This does not, however, preclude use of contractors to analyze debtor objections and propose resolutions on those objections. Department officials must therefore consider the objections raised by each debtor, and must issue a decision on those objections. Unless and until a Department official makes findings and issues a decision, there is no ruling on a debtor's objections. [[Page 8150]] The Department agrees that contractors used to prepare recommendations should be trained to properly analyze debtor objections. However, because contractor analyses of those objections are clearly no more than recommendations to Department staff and have no binding effect whatever on the debtor, we see no need to include language in the regulations to characterize contractor analyses.

Debtors have the right, under these regulations, to avoid garnishment by entering a voluntary repayment agreement. The Department uses its collection contractors to negotiate repayment terms with those debtors sent notice of garnishment who wish to repay voluntarily. Collection contractors have a financial interest in recovery, whether by garnishment or by voluntary payment, and the Department does not use them to prepare recommended analysis for a hearing on any objection, including hardship objections. These regulations ensure a hearing by a designated Department official for any debtor who does not agree to repay voluntarily and has requested a hearing.

Changes: None.

Comment: A commenter opined that the regulations should adopt guidelines and training procedures for any Department staff designated to conduct hearings of debtor objections. The commenter urged that the regulations should require the Department to provide debtors a list of hearing officials available for review of their objections so that they may object to those they consider unqualified or biased.

Discussion: Any decision issued by the Department on debtor objections to garnishment is subject to judicial review under Administrative Procedure Act (APA). The Department has a strong interest in seeing that Department staff who conduct hearings do so in conformance with applicable substantive and procedural law. Therefore, the Department sees little value in adding generalized language to this part that would purport to govern its own internal training procedures.

The commenter points to no administrative or judicial tribunal that allows debtors to select the individual to hear their cases, and shows no good reason to adopt that course in this part. The commenter urged that this would permit a debtor to reject a particular individual who the debtor considers biased against the debtor. A debtor who objects to a hearing official as biased, can object as part of the hearing process to that individual serving as hearing official.\5\ Hearings under this part are not subject to 5 U.S.C. 556, which requires the agency to consider and include in the administrative record its ruling on any objection to a proposed hearing official. However, the Department must meet that test, because it must consider and rule on any objection raised by the debtor, including an objection that the hearing official is biased. That determination, and any claim that a decision was the result of bias by the hearing official, may be tested on judicial review.

\5\ Grounds for disqualification in proceedings under this part would include those applicable to Federal court proceedings; as pertinent here, Federal law requires disqualification of a judge in a Federal court proceeding who has personal bias or prejudice concerning a party,

or personal knowledge of disputed evidentiary facts. 28 U.S.C. 455(b)(1).

No Department hearing official benefits financially from the outcome of a hearing, and Federal ethics rules prohibit a hearing official from participating in a matter in which the individual has a financial interest. 5 CFR 2635.402(a). The Department therefore sees no need to add provisions to these regulations offering debtors a choice of hearing officials as a remedy for speculation that some Department official may harbor bias against a particular debtor.

Changes: None.

Content of Decision; Basis of Decision on Evidence Considered at Hearing (Sec. 34.17)

Comment: A commenter stated that regulations should require that hearing decisions be based only on evidence presented at the hearing and should clearly state the grounds for denial of an objection.

Discussion. Section 34.17 of the proposed rule provided that the decision would include the hearing official's conclusions and reasoning for each objection presented. We agree that the decision must rest on evidence presented in the hearing, but that hearing process is informal and may extend beyond the actual oral hearing. The regulations do not bar debtors from presenting in oral hearings objections not raised in the request for hearing, and do not require debtors who seek oral hearings to disclose all the evidence on which they will rely to support an objection. Because new objections and evidence first presented by the debtor during an oral hearing may require the Department to obtain further evidence in order to evaluate, the hearing official may leave the record open both for the Department and for the debtor. We may need to obtain additional evidence to respond to objections and evidence submitted by a debtor in either an oral or paper hearing.

To ensure that evidence we may obtain after the notice is sent is fairly considered in the hearing process, the debtor must have an opportunity to examine and respond to that evidence before the hearing official makes his or her decision. Therefore, if we intend to consider evidence that was not included in our records of the debt that were available for inspection prior to the hearing, the hearing official will consider that evidence only after we notify the debtor, make that evidence available to the debtor, and provide a reasonable period for rebuttal evidence and argument by the debtor.

The proposed regulations did not address the situation in which the debtor learns after filing the request for hearing that specific relevant evidence is available, and wishes to submit that evidence and have it considered in the proceeding. We believe that the debtor should have the opportunity to do so, if that evidence can be

promptly acquired and produced. To ensure that this opportunity does not unduly delay completion of the hearing and issuance of the decision, it is reasonable to expect the debtor to make a specific request that the record be held open for consideration of such evidence, and to describe in that request what the evidence is, and why it is relevant.

The proposed regulations did not address situations in which a debtor requests access to records, and then seeks to submit evidence and objection based on a review of our records of the debt, or seeks--but is denied--an oral hearing at which he or she would offer evidence and objections. Department regulations for the Treasury Offset Program assure a debtor who seeks access to Department debt records with reasonable diligence--within 20 days of the date of the notice of proposed offset--an extended deadline for presenting evidence and argument opposing the offset. 34 CFR 30.33(d). A similar assurance is appropriate in these proceedings. Finally, the regulations can clarify that a debtor who intended to present evidence and objection at an oral hearing should have an opportunity to submit both in written form if that request for an oral hearing is denied.

The time provided for submission of evidence and objections not included in the request for hearing may vary depending on the situation. We believe that this period should ordinarily be at least seven business days, but could in particular circumstances be shorter, or, as resources may permit, longer. In any event, the particular deadline applicable in each situation should be communicated to the debtor.

Changes: Section 34.17 is modified to provide that the decision rests on evidence in the hearing record, and includes a description of the evidence considered in making that decision. Section 34.13 is modified to add a new paragraph (d) to state the instances in which the hearing official will accept evidence and argument not included in the request for hearing or presented during an oral hearing.

Section 34.13(d)(4)(i) provides that if the debtor requests access to records within 20 days of the date of the notice, the debtor may submit evidence and objection for a limited time after we provide the requested records. Section 34.13(d)(4)(ii) and (c) provide that if we obtain and intend to have considered in the hearing process evidence that was not included in the records that were available for inspection by the debtor when notice was sent, we first notify the debtor regarding the new evidence, make this evidence available to the debtor, and provide a reasonable period for rebuttal evidence and argument. Section 34.13(d)(4)(iii) provides for a brief extension of time, upon request, for a debtor to submit specifically-identified evidence not previously presented, and to raise an objection based on that evidence. Section

34.13(d)(4)(iv) provides an opportunity to submit evidence and argument after a request for an oral hearing is denied.

Comment: A commenter urged that the regulations require that information about reconsideration and appeal rights be included in the decision, and that this information be displayed in the decision in large bold letters.

Discussion: The regulations now state that the garnishment hearing decision is final agency action for purposes of the judicial review under the APA. We have no administrative appeal procedures for garnishment decisions, and therefore no administrative appeal rights to explain in the [[Page 8151]] decision. We currently state in a garnishment decision that the debtor may contest the ruling by filing suit in Federal district court and we expect to continue to do so. These regulations to create reconsideration rights, and we agree that the decision offers a useful vehicle for presenting those rights to the debtor.

Changes: Section 34.17(a) is modified to provide that the decision includes an explanation of reconsideration rights available to the debtor.

Comment: A commenter believed that we should state that the position taken in the proposed rule regarding the effect of a failure to issue a decision within 60 days of an untimely request for a hearing applies as well to garnishment action by guarantors under the HEA.

Discussion: We stated in the preamble that the statutory requirement that a hearing decision be issued within 60 days of the debtor's request does no more than require the garnishing party to suspend any outstanding garnishment order if a hearing decision is not issued within 60 days of the debtor's request, but does not bar resumption of garnishment, or, if an order has not been issued, issuance of the order, after an adverse hearing decision is issued. As explained there, this conclusion follows from well-established case law addressing the effect of statutory deadlines on agency action. *United States v. James Daniel Good Real Property*, 510 U.S. 43, 63 (1993); *United States v. Montalvo-Murillo*, 495 U.S. 711 (1990); *Brock v. Pierce County*, 476 U.S. 253 (1986). Pursuant to the principle articulated in these rulings, failure by a guarantor to meet the HEA 60-day decision requirement, like a failure to meet the same duty under the DCIA addressed in these rules, does no more than suspend the garnishor's right to issue or continue in effect an existing garnishment order.

Changes: None

Financial Hardship; Reconsideration (Sec. 34.24, 34.25)

Comment: A commenter stated that provisions regarding the right to claim financial hardship were inconsistent and should be clarified to allow the debtor to raise hardship at any time.

Discussion: The regulations provide that the debtor may object to garnishment on financial hardship grounds at any time, but that the Department in general commits to provide a hearing on a hardship objection no earlier than six months after we issue a garnishment order. The Department recognizes that in some instances, financial circumstances may change substantially within a relatively short time, so that a debtor not faced with hardship at the time of the notice or hearing may suffer financial setbacks before six months of garnishment have been completed. The regulations therefore provide that the Department will consider a hardship objection raised within that six-month period if in the judgment of the Department, the debtor shows in the request for review that his or her financial circumstances have substantially worsened after the notice of proposed garnishment on account of an event such as disability, divorce, or catastrophic illness.

Section 34.7 of the proposed regulations stated that we provided no hearing regarding objection to the rate or amount of withholding on a new garnishment action if, within the past 12 months, we had begun garnishment proceedings and determined in those proceedings an appropriate withholding amount, either by decision or by terms of voluntary agreement. This section applies to those circumstances in which we start garnishment to collect a different debt than that which we have already issued a garnishment order, or we start garnishment action to enforce a debt after the debtor breached an agreement to repay that debt after we had given notice of intent to collect that debt by garnishment. In both voluntary repayment agreements and hardship determinations, the Department typically states that the determination is effective for a period of six months, after which the debtor must demonstrate that he or she cannot pay more than the installment amount agreed to or the withholding rate determined to be appropriate. The 12-month period in proposed Sec. 34.7(b) would have been inconsistent with this practice and with the general commitment in proposed Sec. 34.24(c)(1) to consider a hardship objection within six months after the garnishment took effect.

Changes: Section 34.7(b) is revised first to state that a hearing is available to contest the amount or rate of a proposed garnishment only if the rate or amount there proposed exceeds the rate or amount we had agreed to within the preceding six months in an agreement resolving a prior garnishment proposal. Second, the same provision is revised to remove the restriction of hardship objection where a hearing decision within the preceding 12 months had set the withholding rate or amount.

Comment: A commenter objected that the grounds for hardship should not be compared to the grounds for undue hardship discharge of student loans in bankruptcy. The commenter disagrees that the case law interpreting the undue hardship requirement provides useful guidance, because a hardship determination under this rule is binding for six months, while a bankruptcy hardship determination in bankruptcy is permanent and takes into account the expected long-term financial difficulties of the debtor.

Discussion: The commenter suggests that the degree of financial hardship that merits a financial hardship under this rule differs from, and is less than, the kind of financial hardship needed to support a claim of undue hardship in bankruptcy. The observation is accurate, because these regulations measure hardship using the national standards, which compare the debtor's expenses to the average amounts incurred by families of similar size and income, while bankruptcy hardship analysis compares the debtor's expenses to those needed to maintain what case law refers to as a "minimal standard of living." *Brunner v. N.Y. Higher Educ. Serv. Corp.*, 831 F.2d 395, 396 (2nd Cir. 1987). The amounts spent for living expenses by peers of the debtor will in many instances significantly exceed those justifiable for a minimal standard of living.\6\

\6\ The Brunner test includes two other steps not relevant to hardship claims in garnishment proceedings.

Under these regulations, the debtor bears the burden of proving the necessity of any amounts claimed in excess of the average amounts spent by his or her peers. The debtor may contend that above-average expenses are needed for housing costs, retirement savings, tuition for private schools, charitable contributions, vehicles, utilities, and telephone charges which the debtor now incurs. Bankruptcy courts routinely address these claims in evaluating undue hardship claims; that case law can provide guidance in considering whether a debtor carries his or her burden under these regulations of proving that above-average expenses are necessary.

Changes: None.

Comment: A commenter urged that the Department include with the notice of proposed garnishment a separate form for debtors to use to claim financial hardship, which would explain the grounds for a hardship claim and how to obtain a hearing on the objection.

Discussion: The notice currently used by the Department, and that which the Department intends to use for garnishment under these regulations, explains the debtor's right to contest the proposed garnishment on both substantive and hardship grounds. The Department

may modify the format of the notice as experience demonstrates that particular changes are useful.

The Department currently sends financial statement forms to those debtors who state on their request for hearing that they intend to object on hardship grounds. The overwhelming majority of objections to proposed garnishments that the Department now receives are based on financial hardship. The Department agrees that a self-explanatory form has proven very useful to encourage debtors to present their financial circumstances in a way that makes analysis of the objection by the Department easier, but sees no reason to commit at this point in regulations to a particular form, or to a particular method of providing that form to debtors.

Changes: None.

Comment: A commenter asked that we state that positions taken in the proposed rule regarding the burden of proof of hardship and the need to present that claim by completing a financial statement disclosing the income and assets available to meet the needs of the debtor and his or her family, apply to garnishment proceedings by guaranty agencies under HEA section 488A.

Discussion. Because the debtor alone has evidence needed to prove financial hardship, we believe that financial hardship is like an affirmative defense to a claim, such as repayment. As a matter of common sense and common law, the person who claims an affirmative defense bears the burden of proving that defense by a preponderance of the credible evidence. We provide a financial statement form for debtors who claim hardship to complete, and we intend to [[Page 8152]] continue to do so. The rule itself does not bar consideration of evidence presented in other forms.

Fair consideration of hardship claims depends on full and accurate disclosure of the income and assets available to meet the needs of the debtor and his or her family. Hearing officials should reject as unsupported those hardship claims by debtors who fail to disclose completely and--for written records hearings--in a form that bears some indicia of trustworthiness, such as a statement or affirmation that the disclosure is made under penalty of perjury.

Independent hearing officials conducting hearings under HEA section 488A must rule in accordance with applicable law, including Department program regulations. FFELP regulations do not contain any provision that expressly allocates the burden of proof of financial hardship. Section 34.21(d) does not bind either debtors whose loans are collected by guarantors, or hearing officials used by the guarantors, but rests on principles that courts generally apply to allocating the burden of proof between litigants. Those principles, as well as common sense, should persuade FFELP hearing

officials to place on the debtor the burden of proof and persuasion of a hardship claim. As noted above, Sec. 34.21 does not require the debtor to use a particular financial statement form to prove hardship in garnishment proceedings under these regulations; a guarantor may adopt a rule that requires debtors to use a particular form to prove hardship in its garnishment proceedings.

Changes: None.

Comment: A commenter urged that we state that the National Standards adopted by the Internal Revenue Service (IRS) also apply to evaluation of hardship claims raised in garnishment proceedings under the HEA.

Discussion: As discussed in response to other comments, these rules apply only to debtors subject to Department garnishment action under the DCIA, and these regulations do not bind debtors in garnishment actions under the HEA by either the Department or guarantors. However, we strongly believe that the Standards provide unique and well-founded, empirically-based benchmarks of amounts needed for basic living expenses. These regulations stipulate that amounts spent up to these benchmarks are reasonable and necessary, and create an explicit rebuttable presumption that amounts claimed in excess of these benchmarks are not necessary.

Under both the HEA and the DCIA, as discussed in response to other comments, the debtor bears the burden of proof and burden of persuasion that particular expense amounts are necessary. In absence of a FFELP regulation that expressly adopts the Standards, a hearing official could conceivably accept an expense claim as necessary based on the official's own judgment, even though the claimed amount exceeded the Standards and the debtor presented no evidence to support the need for that amount. We strongly believe that such a judgment would not be well founded. The Department believes that hearing officials in HEA garnishment proceedings should accept the Standards as persuasive evidence of the amounts reasonable and necessary, and should require any debtor who claims larger amounts are needed to support that contention by persuasive evidence. If debtors in HEA garnishment proceedings are properly held to their burden of proof, there should be little practical difference between the presumption created in these regulations and the use of the Standards as reliable empiric evidence of reasonableness.

Changes: None.

Amount Withheld Under Garnishment Order (Sec. 34.19)

Comment: A commenter objected to the proposal that the Department might issue multiple garnishment orders under this rule regarding a debtor who owes several

debts to the Department. The commenter believes that neither the DCIA nor the HEA allows multiple garnishment orders, and believes that Congress intended to limit garnishment to 10 percent of disposable pay.

Discussion: Treasury rules interpret the DCIA to allow a Federal agency that holds several claims against a debtor to issue more than one garnishment order to recover those claims. 31 CFR 285.11(i)(3)(iii). However, the comment is well taken that the total amount that may be withheld pursuant to orders issued by a single agency cannot exceed 15 percent of the debtor's disposable pay. 31 CFR 285.11(i)(2), (3)(iii).

Changes: The regulations are modified in Sec. 34.20(b) to state that the aggregate amount that may be withheld by an employer pursuant to one or more orders we issue may not exceed 15 percent of the debtor's disposable pay.

Comment: A commenter urged that Sec. 34.19 be changed to state that the amount required to be withheld by the employer be 15 percent of disposable pay, rather than the amount directed in the garnishment order. The commenter believed this change to be needed to make the employer and debtor both aware of their potential liability if they do not enter into voluntary repayment of the debt. The commenter also believed that the change to the proposed language would help the employer validate that the amount demanded in the order is accurate.

Discussion: Section 34.19 describes the amount that the employer must withhold pursuant to the garnishment order. That order is sent to the employer, not the debtor, and therefore has no effect on the debtor's ability to repay voluntarily. The notice, on the other hand, is sent to the debtor and warns of the potential garnishment of 15 percent of disposable pay; the notice is intended to motivate the debtor to repay voluntarily. If we determine that withholding at that rate would cause hardship, but that withholding a smaller amount would not do so, we must order the employer to withhold that lesser amount. HEA section 488A similarly requires guarantors, and the Department when garnishing under that HEA authority, to order withholding of a lesser amount if the debtor proves that withholding ten percent would cause hardship. In any case, the order must always state clearly the amount to be withheld, whether as a percentage of disposable pay or as a specific amount. The employer has no standing to scrutinize or object to a garnishment order, and has no need to be assured that the amount claimed is accurate. That duty lies with the government or the guarantor; the employer is entitled to rely on the garnishing creditor's representation that the debt is owed, and no change is needed to facilitate a review that the employer need not conduct.

Changes: None.

Comment: A commenter urged that we state that the position taken in Sec. 34.24(c)(1) of the proposed rule, that we will consider or reconsider an objection on hardship grounds only after an order has been outstanding for six months, applies to garnishment action by student loan guarantors under the HEA.

Discussion: These regulations allow the debtor to raise or renew a hardship claim after an order has been outstanding for six months, but also allow consideration of a hardship claim earlier if the debtor demonstrates substantially worsened financial circumstances.

34 CFR 34.24(c)(2). This standard provides a reasonable balance between the debtor's interest in

having potentially changed circumstances promptly evaluated and the government's need for finality for its determinations. This regulation is a procedural rule binding only in garnishment proceedings under this part. In the absence of a comparable FFELP regulation, however, whether and when a guarantor provides for reconsideration of a hardship claim remains a case-by-case determination.

Changes: None.

[FR Doc. 03-3947 Filed 2-18-03; 8:45 am]

BILLING CODE 4000-01-P

Appendix Q Section 152 of the Internal Revenue Code: “dependents”

(a) General definition: For purposes of this subtitle, the term “dependent” means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer, (or is treated under subsection (c) or (e) as received from the taxpayer:

- (1) A son or daughter of the taxpayer, or a descendant of either,
- (2) A stepson or stepdaughter of the taxpayer,
- (3) A brother, sister, stepbrother, or stepsister of the taxpayer,
- (4) The father or mother of the taxpayer, or an ancestor of either,
- (5) A stepfather or stepmother of the taxpayer,
- (6) A son or daughter of a brother or sister of the taxpayer,
- (7) A brother or sister of the father or mother of the taxpayer,
- (8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer, or
- (9) An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 7703, of the taxpayer) who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household.

(b) Rules relating to general definition :

For purposes of this section -

- (1) The terms "brother" and "sister" include a brother or sister by the halfblood.
- (2) In determining whether any of the relationships specified in subsection (a) or paragraph (1) of this subsection exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child satisfies the requirements of subsection (a)(9) with respect to such individual), shall be treated as a child of such individual by blood.

(3) The term "dependent" does not include any individual who is not a citizen or national of the United States unless such individual is a resident of the United States or of a country contiguous to the United States. The preceding sentence shall not exclude from the definition of "dependent" any child of the taxpayer legally adopted by him, if, for the taxable year of the taxpayer, the child has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household, and if the taxpayer is a citizen or national of the United States.

(4) A payment to a wife which is includible in the gross income of the wife under section 71 or 682 shall not be treated as a payment by her husband for the support of any dependent.

(5) An individual is not a member of the taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law.

(c) Multiple support agreements: For purposes of subsection (a), over half of the support of an individual for a calendar year shall be treated as received from the taxpayer if -

(1) no one person contributed over half of such support;

(2) over half of such support was received from persons each of whom, but for the fact that he did not contribute over half of such support, would have been entitled to claim such individual as a dependent for a taxable year beginning in such calendar year;

(3) the taxpayer contributed over 10 percent of such support; and

(4) each person described in paragraph (2) (other than the taxpayer) who contributed over 10 percent of such support files a written declaration (in such manner and form as the Secretary may by regulations prescribe) that he will not claim such individual as a dependent for any taxable year beginning in such calendar year.

(d) Special support test in case of students: For purposes of subsection (a), in the case of any individual who is -

(1) a son, stepson, daughter, or stepdaughter of the taxpayer (within the meaning of this section), and

(2) a student (within the meaning of section 151(c)(4)),⁴

amounts received as scholarships for study at an educational organization described in section 170(b)(1)(A)(ii) shall not be taken into account in determining whether such individual received more than half of his support from the taxpayer.

(e) Support test in case of child of divorced parents, etc.

(1) Custodial parent gets exemption: Except as otherwise provided in this subsection, if -

(A) a child (as defined in section 151(c)(3))⁵ receives over half of his support during the calendar year from his parents -

(i) who are divorced or legally separated under a decree of divorce or separate maintenance,

(ii) who are separated under a written separation agreement, or

(iii) who live apart at all times during the last 6 months of the calendar year, and

(B) such child is in the custody of one or both of his parents for more than one-half of the calendar year,

such child shall be treated, for purposes of subsection (a), as receiving over half of his support during the calendar year from the parent having custody for a

greater portion of the calendar year (hereinafter in this subsection referred to as the "custodial parent").

(2) Exception where custodial parent releases claim to exemption for the year: A child of parents described in paragraph (1) shall be treated as having received over half of his support during a calendar year from the noncustodial parent if -

(A) the custodial parent signs a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such custodial parent will not claim such child as a dependent for any taxable year beginning in such calendar year, and

(B) the noncustodial parent attaches such written declaration to the noncustodial parent's return for the taxable year beginning during such calendar year.

For purposes of this subsection, the term "noncustodial parent" means the parent who is not the custodial parent.

(3) Exception for multiple-support agreement: This subsection shall not apply in any case where over half of the support of the child is treated as having been received from a taxpayer under the provisions of subsection (c).

(4) Exception for certain pre-1985 instruments

(A) In general: A child of parents described in paragraph (1) shall be treated as having received over half his support during a calendar year from the noncustodial parent if -

(i) a qualified pre-1985 instrument between the parents applicable to the taxable year beginning in such calendar year provides that the noncustodial parent shall be entitled to any deduction allowable under section 151 for such child, and

(ii) the noncustodial parent provides at least \$600 for the support of such child during such calendar year.

For purposes of this subparagraph, amounts expended for the support of a

⁴ § 151(C)(4) Student defined: the term "student" means an individual who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins -

(A) is a full-time student at an educational organization described in section 170(b)(1)(A)(ii); or

(B) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in section 170(b)(1)(A)(ii) or of a State or political subdivision of a State.

⁵ § 151(c)(3) Child defined : the term "child" means an individual who (within the meaning of section 152) is a son, stepson, daughter, or stepdaughter of the taxpayer.

child or children shall be treated as received from the noncustodial parent to the extent that such parent provided amounts for such support.

(B) Qualified pre-1985 instrument: For purposes of this paragraph, the term "qualified pre-1985 instrument" means any decree of divorce or separate maintenance or written agreement -

(i) which is executed before January 1, 1985,

(ii) which on such date contains the provision described in subparagraph (A)(i), and

(iii) which is not modified on or after such date in a modification which expressly provides that this paragraph shall not apply to such decree or agreement.

(5) Special rule for support received from new spouse of parent: For purposes of this subsection, in the case of the remarriage of a parent, support of a child received from the parent's spouse shall be treated as received from the parent.

(6) Cross-reference For provision treating child as dependent of both parents for purposes of medical expense deduction, see section 213(d)(5)

Appendix R: Declaration of Caregiver Services

U.S. Department of Education

Atlanta Service Center

Declaration of Caregiver Services

I, _____ Taxpayer ID / SSN: _____ declare under penalty of law that the information I give in this statement is to the best of my knowledge and belief true, correct and complete.”

Caregiver Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Daytime Telephone Number and Area Code: _____

Customers Name: _____ pays \$ _____ dollars per Week / Month (circle appropriate time frame) for the care of the following individual(s):

Name of Child	Age Of Child	Amount Charged Per Week / Month

Warning: 18 U.S.C. 1001 provides that “whoever...knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation...shall be fined up to \$10,000.00 or imprisoned up to five years, or both.”

Complete, sign, and return the requested information and documentation to:

**U.S. Department of Education
AWG Hearing Unit
61 Forsyth Street, Room 19T89
Atlanta, GA 30303**

I declare under penalty of law that the answers and statements contained herein are true and correct.

Signature _____
Caregiver

Date _____

Appendix S: Fax Cover Sheet to Submit Untimely Documents to PIC

FAX COVER SHEET



To: **Betty Rukundo, NCI Pearson**
PIC
Attn: AWG Group
Fax # (319) 665 - 7648

From: _____
AWG Coordinator
AG: _____
Telephone: ____ / ____ / ____

RE: Borrower Name: _____ SSN: ____ / ____ / ____

Additional Materials Received after RFH forwarded to PIC on: ____ / ____ / ____ . Please review.

Number of Pages: _____ (including cover)